

**THE  
CONSTITUTIONAL  
MODELS  
OF SOCIALIST  
STATE  
ORGANIZATION**

*by Ottó Bihari*

*Akadémiai Kiadó, Budapest*

# **THE CONSTITUTIONAL MODELS OF SOCIALIST STATE ORGANIZATION**

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One of the most important and at the same time most interesting issues of socialist constitution-making is the shaping and modernization of the new forms of state organization. Analysing the causes underlying the changes that have come about in the state structure, the book traces the development of the socialist state, thereby also revealing the factors which give rise to certain models in the socialist state. To achieve this, the author details the main features of the socialist countries' experiences in building the state.

From among the chapters of this comprehensive, comparative work, the following ones are of special interest: those dealing with the supremacy of the organs of people's representation, the present-day interpretation of the unity of the executive and legislative branches, and the chapters on the development of the administration of justice. At present, these are the most important issues of socialist constitution-making.

The work also deals with local organs, the direct democratic forms of the exercise of power as well as the role of the economic-planning organs. The discussion of the up-to-

date forms of constitutional, legal and expediency control opens the way to issues yet to be clarified theoretically.

The closing chapter on the internal proportions and the checks and balances of the state structure provides the reader with many valuable insights.



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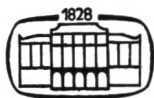
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**OTTÓ BIHARI**



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## CHAPTER 1

# THE NATURE AND IMPORTANCE OF THE CONSTITUTIONAL MODEL

### 1. The Role of the Constitutional Model in the Theory of Constitutional Law

Over the last decade the scope of interest of socialist social sciences and of scholars has widened and the attitudes of various social strata towards these disciplines have also changed. Hungarian socialist legal science continues along its traditional lines, e.g. the endeavour to perfect practical law enforcement, but it also conducts research into the interrelationship among society, law and the state institutions. It tries to determine further trends of development in legal and state institutions by assessing their positive and negative effects. Recent research activities received a particular impetus by the preparation of the reform of economic mechanism introduced in Hungary in 1968 which in turn entailed a substantial change in certain of our legal institutions. No one can doubt that in a state where the planning of the economy is of top priority, a change in the economic structure involves considerable changes of the state organization on central, local and enterprise levels. If we take into account the real strategic aims of the economy and revise the economic structure, this necessarily means a comprehensive control in the whole of the state structure.

All constitutions reflect to a certain extent the constitution-makers' concept of sovereign power: either in the form of a state organization required for the real exercise of power, or in the tactical forms connected with certain parts of the state machinery more or less concealing the ones who wield power by leaving some spheres of authority undefined. Lenin, in his well-known conclusion, emphasized on the one hand that "the essence of a constitution is that the fundamental laws of the state in general, and the laws governing elections to and the powers of the representative institutions, etc. express the actual relation of forces in the class struggle".<sup>1</sup> On the other hand, he immediately referred to the fictitious or non-fictitious nature of constitutions. We can quite easily see what intentions have led the framer of the constitution. A constitution if it

<sup>1</sup> Lenin, V. I.: *Collected Works*, Vol. 15, Moscow, 1973, p. 336.

exists in the so-called written form usually suggests, or at least accentuates by its very structure, the key-institutions of the given state organization, and its relationship to other state and social organs.

(I should like to mention here what an important, central position was given to the monarchical institutions by the fundamental laws of the 19th-century constitutional monarchies, that the constitution of the Fifth French Republic in 1958 broke with the former parliamentary traditions even in the fact that immediately after Article 1 dealing with the question of sovereignty it treats the rights of the President of the Republic, then the Government, and only after this the Parliament.) The way and extent to which the spheres of authority are defined tell us even more about the inner proportions of the state structure.

I have chosen the constitutional level of analysis to make a general comparison between the principal characteristics of the socialist state organization. To be more precise, this book is an attempt to compare the models of socialist constitution. "Model" as a scientific concept originates in the field of philosophy.

It was adopted from there to economics then to sociology, and to legal science: It is especially useful to devote particular attention to the concept of the economic model. This represents a simplified reflection of reality obtained through abstraction. In this model it is possible to study the "effects" on the conceived changes of various factors. The general concept of the model has been further simplified by a French expert of social sciences who writes that the model is "a physical, mathematical system which expresses the actual framework of some reality and is suitable to disclose, or reproduce dynamically the functioning of that reality on its own level".<sup>2</sup>

According to my view *a constitutional model is the simplified and complex description of a general state organization, as it appears within the framework of the constitution showing the crucial points of the organization, and the interrelations of the organizational units.* This way it is possible to study the issue of the chief organizational pillar of the political system, the ways and means of exercising power, and, indirectly, the aims of the state. It may also be estimated to what extent the given state organization enables the implementation of the goals set by the state.

As a matter of fact, all constitutions of the written type represent a model. As a matter of fact, they set the course for further development in building the state and the legal system, by laying down the foundations of the state organization, as well as by giving an outline of basic civil rights. Yet, for several reasons, we must not take the stand of rigid positivism in

<sup>2</sup> Birou, A.: *Vocabulaire pratique des sciences sociales*. Paris, 1966, p. 174.

this respect and rely solely on the text of the constitution. First, we must not forget that the majority of written constitutions are of the nature of a skeleton law presupposing innumerable further delegations even in the sphere of building the state. Second, it is important to indicate that the constitutional idea is subject to further development. Constitutions which were in force for a long period of time or which were born at times of profound social changes receive a modified interpretation in the course of application, and subsequent generations are aware of the constitutional provisions only in this altered sense. Finally, whenever we speak of an existing constitutional model, the duality of constitutional law and constitutional reality must not be forgotten.

Hence, I use the concept of constitutional model as a simplified description of a complex state organization defined and developed within the framework of the constitution. In the present book I shall try to compare the socialist models of constitution and thereby it becomes possible to draw conclusions as regards the future of building a socialist state. In the course of our investigations a special attention will be paid to the fact that during the past decade both centripetal and centrifugal forces were active in the development of the socialist state organization.

## 2. Changes in the Constitutional Model

The proportion of general and particular features of constitutions changes from era to era. It is certainly the general features that are conspicuous to the layman. (Duverger reaches the interesting conclusion that in our days three different basic types of constitutional state organizations can be distinguished: the first in the western capitalist countries, which originates from the 18th-century English type constitution whose pattern is followed by the presidential systems; the second one which reminds us of 19th-century English parliamentarism. The third state-organizational model reflects, according to Duverger, the circumstances of the 20th century: this is the Russian type, i.e. the Soviet state organization. But even Duverger admits that, in addition to these three models, there are other organizational forms such as the Swiss and the archaic organizations; and that further considerable dissimilarities may emerge even within each of the main "systems".<sup>3</sup>)

Is a characteristic fact indeed, that the most general features of state organization are rather similar within a given era. This similarity reflects the fact that the given constitutional forms are favourable for the ruling class and that they have proved to be practicable. The case of the Belgian

<sup>3</sup>Duverger, M.: *Sociologie politique*, Paris, 1966, pp. 138-139.

constitution of 1831 typically proves the validity of this statement. This fundamental law which was amended relatively few times and is still in force, was the ideal constitution of the liberal era. Even after World War I, it served as an example for the new states which wanted to create a liberal parliamentary system, or wanted to appear liberal. This is why the principal features of this model were adopted, temporarily at least, by the constitutions of several East European countries (e.g. by the Rumanian Constitution of 1922).

It might be asked, whether a given ruling class supports the same state-organizational pattern for the entire duration of its rule? This question may be answered only after defining the purpose and place of the given state organization. A state organization is a machinery which serves a political regime, thus considering its structure, political methods must also be taken into account. A so-called police state not only employs police methods, but as a matter of necessity, police organs serving the purposes of the regime are in the centre of its organizational model. If in a bourgeois country, the direct counter-revolutionary interests of the capitalist class require a break with the liberal methods, military juntas use the armed forces for liquidating the parliamentary system, and for abolishing civil rights. The subsequent constituent assembly invests the commander-in-chief of the armed forces, and the government organs controlling the police forces with special rights.

As shown by history, the bourgeoisie makes use of varying political regimes and methods of rule to serve its own ends. The constitution, and the model of state organization outlined in it, are a more or less true reflection of this. In the course of its history, the bourgeoisie did not adhere to one and the same constitutional model of state organization, but always changed it by using different constitutional forms. The technique of drawing up a constitution is various in different bourgeois states, and experience shows that the shaping of the new model can be carried out in the following ways: (a) by a complete revision of the existing constitution, i.e. by framing a new constitution (this method is the most characteristic and traditional in France); (b) by a partial revision, i.e. by the amendment of the constitution (in Europe the Belgian, Swedish and many other bourgeois constitutions have developed this way); (c) by the continuous enactment of new laws in the case of a historical constitution (England is the classical example); (d) by leaving the written constitution seemingly intact, or by amending it to a very small extent only; at the same time due to the extensive use of novel interpretations and applications the constitutional reality emerging through the application of the law differs almost completely from the original intention of the framers of the constitution even as regards the state organization. (This has been the constitutional situation in the United States of America



for more than a century.) Hence, it follows that we must examine the question of the constitutional model in the bourgeois states with the utmost precision by taking into account historical and other conditions. The positivist scholar will only reach misleading conclusions or he gets lost in a study of statutory provisions which, although formally valid, are actually not observed.

Needless to say, our subject does not permit to confine ourselves to an examination of the capitalist models. Therefore, the first question we must consider is whether, or not, there is a change in the stability of the socialist constitutional model as compared to our former conclusions concerning the bourgeois state. Is the constitutional model stable in a socialist state, or is it permanently changing? If such changes can be ascertained, what are the factors that produce it, and in what actual form will it manifest itself.

The question easiest to answer is whether the constitutional model of state organization is subject to change. The fifty-year development of the Soviet Constitution and the connected profound organizational changes, the complete revision of the Rumanian, Czechoslovak, Polish, Bulgarian and Hungarian Constitutions, all support the view that the change in the constitutions and the alteration of the models is not only natural, but also inevitable.

If we change our socialist constitutional models from time to time, what are the reasons for doing so? The most significant change of the Soviet Constitution in 1936 was, beyond doubt, in close connection with a social change of historic importance, and with state functions changing as a result. Stalin, in his report on the draft of the Constitution, indicated expressly that with the defeat of the exploiting classes a fundamental change took place in the relationship between the state and some of its citizens, i.e. the former members of the exploiting classes. Accordingly, the Constitution created a state organization directly responsible to the population, and—as opposed to the Constitution of 1924—the police apparatus of direct oppression was no longer in the centre of the constitutional model. The partial or complete revision of the constitutions of European people's democracies took place, for the most part, after the 20th and 22nd Congress of the Communist Party of the Soviet Union. Being aware of the political reaction brought about by these congresses and their resolutions in all socialist countries, one may say that the new constitutional model of state organization reflected the necessarily changed methods of the state organization.

The alteration of the constitutional model under socialist circumstances is *usually* carried out by way of amending constitution or most often by framing a new constitution. Since all constitutions are by nature of a conservative character (the framers of the constitution try to preserve

the rigidity of the legislation of a given era as they are aware of its ideological and organizational motivations), important rules of state organization are left unchanged in a number of countries, while the underlying practice is changing. According to the model of the Polish Constitution, for example, the relation between the supreme representative body (the Sejm) and the Council of State acting as its deputy (general deputizing authority) did not differ from the one indicated in earlier socialist constitutions. In the text of the Constitution changes were not carried through in this respect even after 1956; only a resolution of the Sejm abolished the right of the Council of State to issue law decrees, i.e. declared the monopoly of legislation to be vested in the Sejm. Yet, the constitutional model of state organization was radically changed through this resolution: in fact, the most important sphere of authority of the Council of State was abolished.

As shown above, the organization of the socialist state, its constitutional model, is inevitably exposed to changes. This variability is closely related to the domestic reforms which are carried out in political methods as a consequence of socio-economic progress. Two methods are to be mentioned in changing the constitutional model of state organization in socialist countries: the most frequent and conspicuous one is the formal alteration of the constitution (adoption of a new constitution, or partial amendment of the existing one), and the other one is the change in "constitutional practice" (by modifying the interpretation of constitutional rules, or by complementing them with norms of lower level).

Finally, a complementary question must be examined: whether the transformation of the model is always due to purely objective factors; or there are subjective reasons involved besides the objective ones, in the changes of the model. I think, it is enough to pose this question to have an answer immediately. (Till now it was preferred not to pose this question, and therefore the problem was not dealt with). It goes without saying that the framers of the constitution may—even if the greatest caution is taken—be influenced by misunderstood theories, by experiments that proved good elsewhere, by traditions, or by momentary requirements which, as it were, would not call for constitutional solutions and, owing to their relatively minor importance, need not be made permanent. Finally, another factor might be the misjudgement or wrong application of the political methods themselves. Precedents for all these occurred in the history of socialist constitutions. However, the framers of socialist constitutions have always been led by the desire not to create fictitious fundamental laws (they were warned of this by Lenin's aforesaid statement); these subjective influences leading to erroneous results were soon eliminated by partial amendments, or some by the effect of the modifying interpretation of those putting the law into force.

Yet it would not be proper to underestimate the effects of subjective influences. Especially not in the case of a constitution when—quite naturally—the aim is to frame a model of state organization which, once laid down, does not require alterations too soon: ill-considered or wrongly formulated theses may hinder the functioning of the entire state apparatus. It is, therefore, not only the result of the scientific foundations and the restraint to create anything fictitious that the socialist constitutions contain less subjective elements than the bourgeois fundamental laws; the fictitious character of the latter is commonly known not only as regards civil rights and fundamental principles, but also in respect of the model of state organization, particularly concerning the legal status of the representative institutions. The improvement of the technique of framing constitutions in the socialist countries enhances the objective, scientific character especially by defining accurately the socio-economic conditions that form the basis of the constitution, and, consequently the methods of exercising power. Also the sphere of norms and organizational schemes to be included in the constitution are laid down and preliminary sociological and organizational studies are conducted in respect of many partial solutions.

These conclusions lead us back to the constitutional model. The fifty years of experiments of the first socialist country, in building the state, the really multifarious forms of state-building in the socialist world of our days, have been embodied first of all in constitutional models. The importance of these constitutional models is manifest mainly in their progressive character.

## CHAPTER 2

# THEORIES OF THE STRUCTURAL MODEL OF THE SOCIALIST STATE PRIOR TO THE GREAT OCTOBER SOCIALIST REVOLUTION

### 1. The Development of the Constitutional Idea

The emergence of the socialist state organization was preceded by ideas on the constitution, just as it had been the case with bourgeois countries one and a half or two centuries earlier. Early bourgeois revolutions were preceded by shaping bourgeois demands into scientific doctrines, by formulating the demands of the population, which were then collected in various forms: similar historical antecedents can be seen prior to the formation of the socialist state. Constitutional ideas about the bourgeois state acted in two directions: towards shaping the system of civil rights, and the building of a novel, non-feudal state organization. As a result of the class struggle, and of the spread of utopian-religious doctrines, the masses tried more and more often to create revolutionary and power organizations, and, later on, summed up their demands. (In France, for example, this was done in the *cahiers de doléances* mostly on the basis of the suggestions and encouragements of provincial bourgeois intellectuals and professionals). All this cleared the way for the framing of bourgeois constitutions, the models of bourgeois state organization. There are, however, two factors which must not be disregarded when studying the early period of bourgeois constitution-making: (a) part of the bourgeoisie had already some experience in governing, so it was led in this respect not by utopias, but by reality; (b) the bourgeoisie could borrow much not only from the theoretical, but also from the practical point of view from those institutions of feudalism which did not directly represent the former ruling classes. It is characteristic, e.g. that American political scientists often refer to the fact that the "Founding Fathers" have adopted a number of features from the British colonial administration, and its organizational concept.

Socialist constitution-making, too, was preceded by several decades of scholarly work dealing with the society, or the state of the future. We cannot even say that there were not plenty of literary and popular utopias about the era of socialism, about the state organs, or about their unnecessary nature in this era. Not only Marxism, but even other trends or

ideas—the utopian socialists as well as the anarchists—were concerned with this problem; innumerable non-Marxian trends developed within the social democratic labour movement, including those which from the outset, declared themselves not to be Marxist.

The common feature of the non-Marxian theories was that they in fact continued to develop bourgeois theories and utopias. This is why they wished to utilize the experience of the bourgeoisie in state organization, and why they did not insist on destroying the bourgeois state organization. In most cases their demand was only its improvement, its reform.

Marxian political scientists of the 19th and early 20th centuries had to face a much greater difficulty than the early bourgeois theorists, because the working class, having been completely excluded from the exercise of state power, had at the time no experience whatsoever in governing the state. Although it was possible to learn the fundamentals of organization in trade unions, and in the workers' self-governing organs, such as the social insurance institutions in some countries, this offered no generalizable basis for the organization on the state level. So it was only natural that Marxism could proceed beyond the laying of its philosophical foundations, only when during the Paris Commune the working class made its first attempts—spontaneously for the most part—at creating its own state machinery. (The second attempt, the creation of the Soviets in 1905, was spontaneous, too, and served as a starting point for the later development of the typical form of the new proletarian state).

## 2. The Paris Commune

One can understand the organizational structure of the Paris Commune only if a few characteristics of its formation are taken into consideration: (a) during the short period of its existence, it could only create the basic organs mainly important for its functions; (b) it was the organ of one city, the capital of France, thus a country-wide organization could not be developed, although some ideas existed about it; (c) ever since the great revolution, the revolutionary organs of Paris felt entitled to speak in the name of the whole French people; (d) though there were Marxists also partaking in the Paris revolution, they acted for the most part out of spontaneous enthusiasm since they had no definite idea about the state of the future. Federative, sometimes even anarchistic notions of other socialistic tendencies can also be distinguished in the Commune's principles of building up the state. Yet when studying the development and achievements of the state organization of the Paris Commune, behind the *spontaneous* development one finds the desires and ideas held by the proletariat for many decades. These very forms, invented and

entertained by the proletariat and manifested in the Paris Commune, were regarded by Marx and Engels so valuable that Marx called them "the political form discovered at last".<sup>4</sup>

What was the state-organizational model of the Paris Commune? The key institution of the organization was the elected municipal council, the Commune of Paris, i.e. a representative body. This body may be characterized by the following two main features: a) its members could be recalled, dismissed at any time; they were bound by exact instructions of the constituents, thus their mandate was restricted. This feature was, of course, related to the direct democratism manifested in meetings, to the "intervention" of the population in fundamental issues of building up the state; b) the Commune attained the primacy of the elected representative body by abolishing the liberal forms of separation between the legislative and the executive powers; the Commune itself was authorized to implement statutory provisions. This means that the function of the representatives consisted not only in the preparation of statutes and legislation; they had to work also in various organs for the practical implementation of the statutes.

Thus the most typical constitutional feature was the representative system with restricted mandates, and—simplifying the concept—the unification of the legislative and executive functions. But these principles must be complemented by a few characteristic features. The Commune did not abolish the executive organs of lower rank, it only deprived them of their privileges. Every civil servant—including the representatives of the Commune who had to take part in public executive activities—was obliged to work for workers' wages, and could be recalled at any time. Marx, opposing the "federative" and anarchistic views, emphasized that the necessity to form a central government was not absent from the Commune's several concepts, on organizing the state on a country-wide level and that such a government would only have been made up of strictly responsible civil servants. Thus the fusion of the legislative and the executive powers did not lead, even under the given revolutionary circumstances, to the abolishment of the organs of the executive power; it entailed the absolute primacy and the authorization of supervision of the elected bodies, and, that they participated in the enforcement of laws.

It is characteristic of the Commune's structure of state organization that it tried to compensate for the necessary centralization by a certain indirectness of the state structure. The territorial and popular basis of legislative and at the same time of executive powers were provided in Paris by the meetings of the population of the districts (*arrondissements*);

<sup>4</sup> Marx, K.—Engels, F.: *The Civil War in France. Selected Works in Three Volumes*, Vol. 2, Moscow, 1969, p. 223.

instructions to the representatives came also from these meetings. The representatives reported to these meetings on their work and on the proposals of the Commune. Many an initiative originated here (e.g. on the separation of schools from the Church, on new principles of the administration of justice, etc.). Thus this interaction between the Commune and the district meetings created two centres of power: *a representative organ of power*, and a *direct democratic-social institution*. This point should be emphasized because the mandate-system of instructions and responsibility transformed the meetings of the population into real power organs.

The idea of arming the people directly, of setting up a militia along with abolishing the police and the army which were alienated from the people also deserves consideration in the state-organizational model of the Paris Commune—all the more so, since this idea, too, had a great influence on the socialist doctrines of the coming decades.

Although no resolutions were passed in respect of other branches of the state organization, proposals were put forward—mainly in the districts—even in the last days of the existence of the Commune. These proposals were logically related to the earlier organizational model. The constituents of the 14th district proposed e.g. that the justices of peace be eligible and civil and commercial jurisdictions be free of charge.

Marx was, in fact, the first to sum up the results of the first attempt at building a socialist state, and it was the Marxist literature that pointed out the laws governing its spontaneous development. Since no other similar model was available during the subsequent three decades, this model was used for the demonstration of the state organization of the future, in a positive or negative sense. That is why this short-lived attempt is highly important for the history of socialist ideology.

The state-organizational model of the Paris Commune draws our attention to two important characteristics: (a) at this early period of creating a socialist state, a clear stand was taken—among others on the basis of revolutionary bourgeois-democratic traditions—for the *primacy of the elected organs of popular representation*; (b) rudimentary forms of the division of labour within the state organization took shape—even if within rather vague and unstable limits already during the short existence of the Paris Commune. The officials of the executive were deprived of their privileges and of the financial basis of their alienation from the people and performed definite, specialized state activities.

### 3. The Organizational Model of the Soviets of 1905–1907

In some respects the power of the Soviets was similar to that of the Paris Commune, but it differed from it profoundly in many others. The Commune, seized complete power in the capital of France, and this. as a



consequence of the traditions of French centralization, created a special situation. As seen from the leaflets of the Commune, it regarded itself as the natural central power of the French State. At the same time, no other centre of power of the commune type emerged in France. In Russia, on the other hand, different towns or even rural districts formed their Soviets (councils) of workers' and peasants' deputies in revolutionary ways at different times first as organs of strike, then as institutions that assumed local power. They gradually took over the functions connected with the supply of the population and the maintenance of public order from the earlier local governmental bodies and state organs. During the period of revolution, however, no model of the country-wide apparatus of the Soviet organs was developed. The immense territory of Russia, the separation in time of the revolutionary movements, rendered, as a rule, the development of the Soviets a local problem.

Their position might be characterized by the fact that as spontaneously emerged political strike-organizations they turned to organs of local power mainly in large, separated territories; so the task to concentrate power did not arise. Minor local "republics" were formed at best, but these could not exist long.

These Soviets were made up of organizations of workers and other working strata of society, just as the Paris Commune. But it was an important difference that certain Soviets developed in agricultural areas, were not under the direct control of the proletariat. The Soviets, having no uniform organization and being dispersed, different in respect of their class basis, did not form a homogeneous organization; nor did the necessity of shaping one arise. Yet, if we want to describe the model of the 1905 Soviets, the following general features might be enumerated: (a) the Soviets were everywhere *power organs of class character*; this means that the delegates were elected not in general elections, but at electoral meetings held by workers in factories, or by soldiers at their units; (b) *the centres of power* were the Soviets of the workers' or soldiers' deputies, or, in some cases, the Soviets of peasants' delegates; they exercised in given territories the full revolutionary power, in fact, and exceptional power; (c) the Soviets were very often *re-elected*, every week in some places, whereby the meetings of workers and soldiers became also centres of power; (d) the Soviets set up *different organizations* at different places to carry out their orders, to perform the everyday duties of the executive. At any rate, the strict responsibility of these organizations to the Soviets was maintained always and everywhere.

The basic similarity of the two models—that of the Paris Commune and that of the Soviets—is manifest in the fact that the primacy of the elected representative organs was dominant in both; any other state organ could act only in subordination to them. The other common feature was

the imperative mandate of the representatives. We may say that, in the given period, these two basic principles constituted the alpha and omega of socialist democratism. (It is worth mentioning in this context that in major cities, where Soviets were organized on several levels—i.e. Soviets of district and municipal workers' delegates—like in Moscow, the indirectness of election developed in the same way as in Paris. This is quite obvious, since it is the only *technically* feasible procedure of election in revolutionary times when large masses of people have the right to vote).

While all the experiences of the Commune were widely studied and the entire revolutionary socialist movement put the Commune's conclusions at issue if for nothing else then because of their novel nature, no comparable international reaction, no scientific evaluation followed the first appearance of the Soviets. The Bolsheviks, at the ebb of the revolution, stressed in their resolutions (at the 4th Congress among others) that the movement of the Soviets can be effective only if the real preconditions for overthrowing the bourgeois state power are given. It is not only the form of the Soviets that is important but also the aim of their activities. Thus, after 1906, the central problem of the Russian socialist movement was not the analysis of the forms of Soviets, but that of the revolutionary struggle, and, after that, the preparation of the anti-war movement. The discussion of the model of Soviet power became a central issue only after the new February revolution of 1917, not only in Russia, but also in other European countries.

#### 4. The Soviets of February 1917

The further climax of the revolution once more raised the problem of the character of the future state organization in Russia. The Marxists at that time, i.e. after the February revolution of 1917, had no doubt, that the Russian working class was in an advantageous position in so far that it had active revolutionary organs at its disposal in the form of the Soviets of workers' deputies. These Soviets had become by that time the traditional organs of revolutionary power, and of assuming power, at least locally. The proletariat in any other European country had no such non-party mass organs. These served, therefore, as an objective basis for the notions about the state organization of the future. The Bolsheviks, and especially Lenin, tried to solve the rest of the problems by relying on earlier experience. They pronounced in fact certain fundamental truths, without thinking of elaborating a detailed model. This is all the more understandable since they did not want to act and think in utopian ways.

The ideological history of this era shows clearly that the difficulties to be overcome in the research methods of the social sciences are much

greater than those of the natural sciences of mathematical exactitude. It is especially difficult to draw up detailed plans at the time of profound social changes when the number of unknown factors of development is practically unlimited. It is an unquestionably great achievement of Leninism to have drawn up the fundamental characteristics of the future state. In fact, it had not endeavoured to do more than that; and where it went beyond this limit, it never tried to find a final solution. The fact itself that state power has not yet been seized by the working class inevitably renders certain phases of social development unpredictable; thus the pertinent doctrines are likely to become utopian. It is obvious that in 1917 the prospects of the European proletarian revolution envisaged the future of the state, and especially that of the armed forces, in a different way than during the later period in which socialism was to be built up in a single country. Lenin cited Marx as an example: "There is no trace of utopianism in Marx, in the sense that he made up or invented a 'new' society . . . He studied the *birth* of the new society *out of* the old, and the forms of transition from the latter to the former, as a natural-historical process."<sup>5</sup> (But the picture of a militia could not be but a utopia simply because under the circumstances of our century Soviet power needed a permanent army, and a separate body of police forces.)

The concepts on the state-organizational model prior to October were discussed by Lenin mainly in his works *Letters from Afar* and *State and Revolution*. He did not finish his outline; he said in the epilogue to *State and Revolution* that it is more pleasant and useful to follow the experiences of the revolution than to write about them. Let us try to sum up these ideas.

According to Lenin, the new state power must be vested in the Soviets of the workers', soldiers' and peasants' deputies. These undoubtedly class and stratum organizations must be united by the All-Russian Soviet elected by them, which at the same time must embody the supreme national power.<sup>6</sup> The government, too, must be organized following the pattern of the Soviets of workers' and peasants' deputies.<sup>7</sup> In accordance with the earlier standpoint, Lenin emphasizes in this sketch that proletarian democracy is inconceivable without representative institutions; but these are not parliamentarian in the sense that they do not separate the legislative from the executive power in this type of state organization.<sup>8</sup>

Yet the other Marxian idea, the return to the "primitive", i.e. direct democratism, is also not absent from this model " . . . for how else can the majority, and then the whole population without exception proceed to

<sup>5</sup> Lenin, V. I.: *Collected Works*, Vol. 25, Moscow, 1974, p. 425.

<sup>6</sup> Lenin, V. I.: *Collected Works*, Vol. 23, Moscow, 1974, pp. 337-338.

<sup>7</sup> Ibid. p. 340.

<sup>8</sup> Lenin, V. I.: *Collected Works*. Vol. 25, Moscow, 1974, pp. 424-425.

discharge state functions? ”<sup>9</sup> This means that the Soviet system, by involving the masses, is closely interwoven with direct proletarian democracy.

Although the “administrative apparatus” of bureaucrats must be destroyed, the state apparatus must be replaced, at least temporarily, by a new one. The civil servants can be recalled, their salaries are about the same as the workers’ average wages. Ministries must be replaced by committees of experts working together with the Soviets of workers’ and soldiers’ deputies.<sup>10</sup>

Finally, this model comprises the workers’ control organization recommended at the 6th congress of the Bolsheviks; it would be composed of the Soviets of the workers’ deputies, or the representatives of the trade unions and workshop committees.<sup>11</sup>

### 5. The Nature of State-Organizational Ideas prior to the Constitution

The Leninist concept about the organization of the state of the future—a rather vague sketch—was the last imaginary model of the history of socialism; for it was followed by constitutional realization, in confrontation with the actual everyday problems of building a state. Anyway, the fact that a socialist state emerged, not only for a few days or weeks, but once and for all, meant a turning-point in world history. All that had been, till then, initial primitive attempt in many cases or conceptual construction, often verging on utopias, now became a concrete organizational problem to be solved. There is a considerable difference between ideas concerning a constitutional organization, I might say, pre-constitutional ideas, and the actual constitutional models, even in the world of socialism.

As I mentioned before, the bourgeoisie tried to approach the constitution of the future by utopias, “constitutional” demands, and philosophical works. The logical chain of thoughts regarding the idea of constitution was the result of definite philosophical theses. Montesquieu who is regarded as one of the fathers of bourgeois sociology, and who has developed several “constitutional” ideas, approached his subject through a sociological method that was by no means exact. Voltaire’s habitual prejudice and jealousy is manifest in his scathing criticism in his letter to M.Gis. (“If you try to verify Montesquieu’s references, you won’t find

<sup>9</sup> Lenin, V. I.: *Collected Works*, Vol. 25, Moscow, 1974, p. 420.

<sup>10</sup> Lenin, V. I.: *Collected Works*, Vol. 25, Moscow, 1974, pp. 472–473.

<sup>11</sup> Resolutions of the Congresses, Conferences, and Central Committee Plenums of the CPSU, Part I, (In Hungarian), Budapest, 1954, p. 438.

four among them that are real".) Yet it remains that economic-geographical, ethnographical and other data are handled extremely casually almost in the manner of the *Persian Letters*.

Nonetheless, the bourgeoisie had one advantage in the field of constitution-making: it had positive knowledge of state organization in most West European countries, especially it had already participated in the operating of local governments. However, this inevitably led to attempts at integrating the well-known customary forms of local organization into the state structure.

The pre-constitutional model of the socialist state organization differs from the one preceding bourgeois constitution-making in two respects: (a) since the majority of the theories about the socialist state of the future and its inner structure was of Marxian, i.e. materialistic origin, efforts were made from the very beginnings to avoid the world of *utopias*; (b) the working class had *no experience in building up the state* due to the fact that the proletariat had been excluded from the bourgeois state organization from the very beginning.

These two factors acted in combination and created a peculiar situation in the methodology of state-organizational concepts. These ideas were, first and foremost, and from the very beginning, born from the *criticism* of the bourgeois state and its organization. This is why standpoints of negative motivation were dominant in that period. It is only natural that standpoints of this type often survived the era of their birth and had an influence during the socialist revolution and later during the building of the socialist state. (I might mention, for example, the standpoint which was first expressed in a statute of the Paris Commune and was unanimously welcomed by Marx, Engels and even Lenin, i.e. to fix the salaries of civil servants on the level of the average wages of workers. This view originated, beyond doubt, in the criticism of civil servants (typical of a *Nachtwächterstaat*) who were altogether alienated from the working people. No higher technical, economic or other qualification was required for such official functions, since this section of the state organization was confined to acts of registration for the most part. Similarly, the principle of re-uniting legislative and executive power was a theory that arose from a negative critical standpoint. Marxism, in this respect, was historically correct in criticizing the paralyzation of the life of "legislative" parliaments, the practical cessation of their influence on other sectors of state life, and especially the liquidation of their right of control over the executive, as well as the administrative apparatus. This criticism, however, gave rise to a further extreme standpoint about the unity of legislative and executive powers, without clarifying theoretically the sense and the real function of this unity. The solution adopted by the Paris Commune was regarded a clarification, the essence of which was that

in the period of revolution and civil war persons were put in charge of various branches of executive power who were not specialists as they were not elected on the basis of their qualifications. But this could not serve as a solution, if only because of the fact that the Paris model reflected a state of emergency in administration that was essentially one of military nature. I should like to point out that the explanations offered later for the doctrine of the unity of legislative and executive power—which stressed in this context only the supremacy and right of control of the representative organs—did not preserve the original basic principle, but distorted it.

Later on, the two sources of state-organizational models were the Paris Commune and the organization of the Soviets of 1905–1907. If I have characterized the critical source in a negative sense in the foregoing, then I would rather emphasize the positive character here. The disadvantage of the working class, i.e. its exclusion from all sectors of the bourgeois state organization, rendered practically natural that materialist philosophers and politicians were attracted by these two great historic experiments of the working class. We must take into account, as concerns both the Paris Commune and the Soviets of 1905, that—compared to the organization of the *entire socialist state*—their investigation means only a study of micro-phenomena. In 1871 Paris became a socialist city-state, and the Soviets, even when they became “local republics”, did not go beyond the relatively narrow field of the activities of local organizations. It is very difficult not to interpret Lenin’s afore-cited remark from the epilogue to *State and Revolution* to the effect that however interesting and useful lessons might have been drawn from the activities of the Soviets of 1905 and 1917, these cannot be compared with the revolutionary experience when the socialist state already exists. Lenin himself was involved in the events of 1905–1907. However, he speaks of these very aspects with admirable reserve. It was evidently the future birth of a socialist society that “protected” him against an overestimation of the historical importance of institutions which emerged under similar, yet not identical circumstances. Still, even Lenin refers occasionally to the “form found at last”, his remarks, however, reflect the pettiness and relative simplicity of local organizations incommensurable with those of the state. I think here in the first place of the idea to replace the ministries with the committees of experts. (This was a micro-experiment of the Paris Commune which presupposed smaller-than-state dimensions.)<sup>1 2</sup>

It is a still greater difficulty than the local character of the socialist examples that none of them could reflect the economic problems and

<sup>1 2</sup>It acted long on the Soviet state organization in the form of the collegia of the People’s Commissariats, until it was replaced by an undoubtedly more rational organization—once for all, it seems.

tasks of an industrial society with a large population. It was exactly the typical forms of state control over production that could not emerge under the conditions of a revolution and civil war. That was why Lenin, in his works written before October 1917, searched so consistently for the organs directing the economic sector. He knew well that the existence of such an organization would be a matter of life and death right after the revolution. (This organization emerged in the often outlined and rather variously conceived form of the workers' control.)

It is obvious that a negative critical analysis as well as examples of dissimilar magnitude may distort the realistic planning of building a state apparatus, indeed they may prove even harmful.

As to the problems of the state, it may be asked whether, prior to the constitution, i.e. in the period preceding October, it was appropriate to form utopian notions in relation to a socialist state organization. It appears also from what has been said earlier that when the Marxist standpoint about the state was framed, great efforts were made to insist on an objective examination and study of the initial attempts which – even if not for a longer time, and not on a national scale—replaced the apparatus of the capitalist state by a revolutionary organization. This aspiration for the maximum of exactitude, the scientific ideology, and the sociologically well-founded analysis based on the latter, were the first in the history of sciences that offered a possibility of *fundamental* conclusions about the state avoiding the pitfalls of utopia.

In the teachings of Marxism–Leninism about the state it is fundamental to give an exact answer to questions raised about the emergence and forms of the state, as well as its future. Marxism–Leninism had sufficient historical, sociological, philosophical data to be able to reach exact and scientifically valid conclusions in these fields.

The reason why non-realistic elements found their way into the pre-constitutional model of state organization is that, in the case of a not yet existing socialist type of state, no sufficient amount of data is available for examining the particular solutions. The variety of social changes is often an unsurmountable obstacle to the elaboration of organizational details. In such cases it may happen that, owing to the fact that partial solutions are incalculable, gaps are filled up by unrealistic, utopian conceptions.

I have referred to conclusions which are no longer professed by the Marxist–Leninist theory. These are for the most part errors of logic deduced from correct observations, or exaggerated conclusions. (We might enumerate conclusions such as Engels' explicit statement in his *Critique of the Erfurt Draft Programme*, according to which a democratic republic is the specific form for the dictatorship of the proletariat; or the stand taken for the abolition of the so-called salary privileges of the civil



servants kept up for decades or the theories about the liquidation of the armed forces and police forces and the organization of a "people's militia", the arming of the whole of adult population.)

As the formulae of planning cannot be reduced to a few factors we may come to the conclusion that in planning a more detailed model of state organization it was natural that before the birth of a socialist state also non-realistic conclusions have been drawn. Considering this, as well as the results that later seemed correct and "logical", it can be ascertained only after the social effects were experienced, whether a given model serves the aims of society. From the first days of the Soviet power, Lenin himself played a leading role in correcting the pre-constitutional models whenever the conceived form of state organization failed to fulfil its functions.

We must distinguish the organizational forms which, despite earlier ideas, were not at all suitable for the socialist state, from those which were the products and suitable organizational forms of a given period, and which could and had to be replaced by better, more expedient ones. The indirect electoral system belongs to the latter category. It played a considerable role in the early pre-constitutional models, and in the early Soviet constitutional statutes. At that time it served the increasing influence of the working class. Similarly, the frequent repetition of re-elections reflected the political progress of the masses. All these aims were, later on, accomplished more readily by other means; therefore new organizational forms had to be, and were found.

The pre-constitutional models of the socialist state organization—however varied they were as to nature, origin and level—exerted a considerable ideological influence on the early Soviet socialist constitutional model. Years had to pass before the illusory solutions of the constitutional organization vanished and could be replaced by a more rational state apparatus serving more efficiently its purposes. (Not only the Bolshevik Party, but also the non-Marxist leftist social-revolutionaries had an influence on the first period of framing the statutes of constitution; moreover, this influence could be felt fairly often, as—for example—in the question of federation, when the first Soviet constitution was being drawn up.)

## CHAPTER 3

# THE DEVELOPMENT OF THE SOVIET CONSTITUTIONAL AND STATE-ORGANIZATIONAL MODELS

### 1. The October Decrees

During the months following the October Socialist Revolution, Russia chose a most original method of framing a constitution: partial statutes were issued on all fundamental questions to be regulated by the law where this was required by the day to day development of policy. A part of these decrees gave a legal form to the necessary and current changes in the economic structure, another part summed up the rights and duties of the working population; finally, important decrees provided for the gradual building up of a socialist state organization, simultaneously with the abolishment of the old state apparatus. Gradualness here meant that the first step was to define the authority—and less strictly, the organization—of the representative organs which had the largest mass basis and which most directly expressed the will of the proletariat and that of its allies; specialized state organs were set up later on.

There are two decrees or manifestoes which contained basic provisions about the general model of state organization. The Manifesto to all Workers, Soldiers and Peasants declared that all power, everywhere, had passed into the hands of the Soviets of the Workers', Soldiers' and Peasants' Deputies. The national organ of these was the 2nd All-Russian Congress of the Soviets of the Workers' and Soldiers' Deputies. This Congress set up the most important central organs, such as its own Central Executive Committee: the organ acting as its deputy; the provisional workers' and peasants' government, and, finally the Council of the People's Commissars, in order to perform the administration of the country. This Council was supervised by the All-Russian Soviet Congress, and by the Central Executive Committee. The Council of People's Commissars was composed of the heads of commissions which were put in charge of various branches of state life. This central scheme of organization was complemented by the Decree on the Fullness of the Authority of the Soviets. According to this, not only any other non-Soviet organ was prohibited from exercising local power; but supreme, i.e. central, and local powers, were united by direct subordination of the chairmen of the Soviets to the Council of People's Commissars.

This general pattern of state organization was completed by the system of the *workers' control*. This organization was the first Soviet apparatus for directing and controlling economic life. Its sphere of authority covered industry, trade, the banks, agriculture, and transport. It was not permitted to close down any enterprise of national importance, or to change its sphere of operation without a special authorization. The workers' control organization had the right to inspect any records, any material of accounting. Workers' control in factories was exercised either by the workers of the factory, or by their representatives. A local Council of Workers' Control was set up in every major town, province and industrial district. It was the organ of the Soviets of the workers', soldiers' and peasants' deputies, and was composed of the heads of trade unions and of the chairmen of factory committees. Auditing committees of experts were created in addition to the higher organs of workers' control.<sup>13</sup>

Shaping the system of suffrage belongs to the basic features of the model. The All-Russian Central Executive Committee, not even a month after seizing power, issued a decree which regulated the order of re-elections. Two provisions are of importance from our point of view: (a) it recognized the right of the constituents of electoral districts to recall at any time their delegate from any of their representative organs, including the Constituent Assembly if at least half of them wanted to do so; (b) the majority system was replaced by the *proportional* electoral system, and the representative organs elected on the parity basis had to be re-elected in this way.

The so-called "Decree on the Courts" was a highly important step in building the state organization. (It was issued not by the Central Executive Committee, but by the Council of the People's Commissars, dated December 5.) The importance of this Decree lies in the fact that, prior to the revolution, Marxist literature was hardly concerned with the future of the administration of justice. It was at that time that the basic concepts had to be shaped. The Decree acted in two directions. First, it abolished all the courts which were formerly active, including the older magistrate courts. Local courts were now elected by territorial and regional Soviets, and, where no such Soviets were acting, by district, municipal and provincial Soviets. The jurisdiction of local courts was regulated by the Decree. Courts of Appeal were the conferences of local courts held in *uezds* and in the capital. (On the fronts, the local courts were elected by the regimental Soviets and by regiment committees). The Decree abolished the institution of the examining judge that of the procuratorial supervision, and the lawyers' organization. On the other hand it made possible

<sup>13</sup> Order of the All-Russian Central Executive Committee, November 29, 1917.

the introduction of arbitration not only in civil law disputes but also in criminal law suits among citizens. Revolutionary tribunals of workers and peasants, elected by the provincial Soviets, and composed of a president and two assessors, took action against the perpetrators of counter-revolutionary crimes. The Soviets set up investigating committees for investigating such acts. It was characteristic of the authority of all courts that, according to the statement in the Decree, all laws were invalidated which had been contrary to the decrees of the Central Executive Committee of the Soviets of the Workers', Soldiers' and Peasants' Deputies and those of the workers' and peasants' government, and to the platform of the Russian Social Democratic Party and the Social-Revolutionary Party. According to Paragraph 5 of the Decree: the various organs could abide by the provisions of overthrown governments only if these were not contrary to revolutionary convictions and sense of justice. This meant that it was left to the courts to pass judgments on the basis of the revolutionary aims.

Similarly, a highly important regulation in the shaping of the state-organizational model was the Decree of the Central Executive Committee on establishing the Supreme Economic Council. This organ was coordinated to the Council of People's Commissars to organize the national economy and finances of the state. Extensive powers to govern economic life, and to prevent and retaliate damages caused in this field were assigned to it. The Supreme Economic Council was composed of the All-Russian Workers' Control Council, of the representatives of all people's commissariats, and of individuals vested with the right of consultation. The Council was divided into sections and departments. These divisions had disposal over the various branches of national economy, and prepared the measures to be taken by the particular commissariats. The coordination of the activities of these divisions was the responsibility of a 15-member bureau elected by the Supreme Council from among its own members. The work of the Soviets connected with local economic matters, the activities of local labour, trade, industrial and food commissars, and of local workers' control organs were integrated and directed by the Supreme Economic Council. The economic sections of the local Soviets acted as the organs of the Supreme Economic Council and were bound by its orders.

The detailed principles of building local state organizations—these principles were taken into account when the constitution was framed—were laid down in two regulations: in the public circular of the RSFSR People's Commissariat of Internal Affairs on January 6, 1918 (entitled rather typically "On the Organization of Local Self-Governing Bodies") and in the pertinent regulation. According to the regulation "the Soviets are the organs of local administration and all economic, financial, or cultural-educational institutions, must be subordinate to them." If necessary, the central power could appoint a commissar with wide powers for

setting up a homogeneous local organization. It was made the responsibility of the Commissariat of Internal Affairs to coordinate all the activities of the local administrative bodies, including those of the Soviets. This provided the first possibility for a central direction of the Soviet organization.

According to the regulation, the Soviets of the Workers, Soldiers, Peasants and Farm Labourers Deputies were fully independent in local issues, but had to act in conformity with the decrees and orders of the central organs, and of the Soviets of superior territorial units. All administrative, economic, financial, cultural and educational questions of local character came under the authority of these Soviets. They had to implement the decrees of the organs of central power and other regulations; they had to draw the population into these activities, took compulsory measures concerning requisition and confiscation, they imposed fines, liquidated the counter-revolutionary press and organizations, arrested individuals actively hostile towards the Soviet power. The Soviets elected executive organs, i.e. executive committees or presidiums from among their own members. It was the duty of these to carry out all measures of Soviets. (The military-revolutionary committees formed for the revolutionary period were abolished by this regulation; at the same time, however, the appointment and functioning of commissars in provinces and districts was kept up as a transitional institution at places where the Soviet power was not sufficiently consolidated, or where the absolute power of the Soviet was not recognized.)

The aforesaid two regulations were supplemented by the Decree of the Central Executive Committee, issued on January 3, 1918, which emphasized once more that all power was in the hands of the Soviets and Soviet institutions. Attempts to the contrary, i.e. assuming some of the functions of state power, were qualified as counter-revolutionary acts.

The basic, conceptual regulations of state organization were contained in Chapter IV of the *Declaration on the Rights of the Toiling and Exploited People* (January 25, 1918), in which franchise, and the exercise of political rights in general were restricted: "... today, at the time of the final struggle against the exploiters, there shall be no place for exploiters in any one of the organs of authority. Power must be possessed fully and exclusively by the working masses, by their representation with full powers, i.e. by the Soviets of the Workers', Soldiers' and Peasants' Deputies..." So the principle of franchise limited to the working population was laid down in a law: thus, franchise was not general.

Before the first constitution was enacted, a group of statutes—with regard to nationality problems—laid special emphasis on the federative institutions. Already the *Declaration on the Rights of the Toiling and Exploited People* spoke of the federative organs, and of the right of the

independent Soviets working in nationality territories to decide on joining these organs. The second All-Russian Soviet Congress passed a resolution on the federal institutions of the Russian Republic. In respect to state organization, this resolution might be considered a minor constitutional law. It was the first to sum up the main points of state organization. Accordingly, the supreme organ of power within the framework of the federation was the All-Russian Congress of Soviet of the Workers', Soldiers', Peasants' and Cossacks' Deputies. The Congress must be convoked every three months at least. This organ elected the All-Russian Central Executive Committee, which acted as the supreme organ between the sessions of the Congress. The Government of the Federation, the Council of People's Commissars, was elected by the All-Russian Congress of Soviets, or by the Central Executive Committee. The further division of competencies was given to the sphere of authority of the All-Russian Central Executive Committee and to the authority of the central executive committees of the Republics. The right of decision in local matters was left to the local Soviets, emphasis being laid on the right of Soviets of higher degree to issue regulations towards Soviets of lower level, and on the duty of the organs of central power to provide the conditions for the implementation of governmental and state tasks.

The October Decrees represented the first attempt at building a "constitutional" state organization under the circumstances of socialism. It is therefore necessary to consider them more in detail. The order of legislation is in itself characteristic. It clearly shows the importance of the newly created organs for the new state under revolutionary circumstances. Already before the October Revolution it was quite clear that the "nucleus" of power would be the Soviets, i.e. that power will be vested in the representative organs of the working class, peasantry, and the army. The Soviets were regarded as new organs of legislation which were able to replace the bourgeois legislative institutions by the will of the socialist state, and afterwards became the starting-points for shaping a new state apparatus.

All revolutionary classes are naturally distrustful of the official apparatus, the administrative machinery and courts of the former state, representing another class. The state apparatus is made up of confidential men of the former ruling class who, owing to their social background, attitudes, legal, political and moral views, cannot and, as a matter of fact, do not want to serve the new power. The replacement of this apparatus by another one is a highly complex task. There are two possible attitudes for any new ruling class towards the old apparatus: either to compel it to obedience through a series of reforms, winning it over to the new cause through compromises—or to destroy it and create a new state organization.

When the bourgeoisie seized power, it disregarded the standpoints taken in more radical eras and carried out social transformations based on compromises.

In the building of a state organization the possibility of compromises did not arise after the October Revolution. One of the basic disputes in Marxist literature entailed the problem of crushing the capitalist state. Lenin and the Bolsheviks never doubted the necessity of crushing the old state apparatus; they took the view that the crushing of the state inevitably affects the entire bourgeois state organization—except for the machinery of accounting and recording which is suitable for serving a socialist economy, provided that the entire control apparatus is subordinate to new, socialist state organs.

The first storm of the revolution could not achieve more than to abolish the nucleus of the old power, and to create the levers for shaping new organs of power; that is, to create new state organs which, due to their central position and authorisations, would be able to replace the *entire* state apparatus by another.

It was not only a consequence of earlier revolutionary experience, but, from the class point-of-view, it was also a matter of necessity that the means of creating the new state organization became the Soviets, i.e. the broadest representative organ of the working class and of the other working strata. It was absolutely sensible that the first measure of the revolution transferred power to the Soviets of the Workers', Soldiers' and Peasants' Deputies, both on the central and local levels, and subordinated all other organs to them.

In this way a new centre of power was created which also included the legislative functions, and was able to bring into existence a new state and legal system.

This solution determined from the outset the place of the Soviet in the future state organization, i.e. the supremacy of the representative organs of the new state, their supremacy over all other state organs. The October Decrees were fully consistent in this respect. All state organs—not only administrative organs, but even the courts—functioned to some extent in subordination to the Soviets. This supremacy is evident not only from the order in which these decrees were issued, (this, in itself, could reflect only the legislator's will), but also from the aforesaid resolution on the federative institutions, which was the first uniform organizational statute. The structure and contents of this statute give expression to the principle which was, and remained, the most important feature on which the Soviet system was built.

The other characteristic feature of the organizational scheme was the circumstance that the creation of two institutions, concerned with the economic activities of the state, was among the first regulations passed at



that time. The first one was the institution of the workers' control which aimed practically at securing the socialist state's influence prior to general socialization, and at preventing the bourgeoisie from using its industrial and other productive property contrary to the interests of the working class. The other institution was the Supreme Economic Council, which was the prototype of subsequent controlling organs performing the positive economic activities of the socialist state.

## 2. The Soviet Constitution of 1918

The October Decrees established Soviet power in respect of the state organization just as deliberately as in the field of the workers' rights or of settling economic problems. The aforesaid two regulations—the *Declaration on the Rights of the Toiling and Exploited People* and the resolution on the federal institutions were of fundamental importance. G. S. Gurvitch is altogether right in saying that these two acts are to be regarded as the initial constitution of the Soviet Republic.<sup>14</sup> First, they are the provisions which comprised the most important constitutional questions as regards the scheme of the state organization and the rights of the working population. (Typically the commission preparing the constitution in the last phase of its work—returned to these Decrees, as their basically correct provisions had become common practice.) Second, they were apt to set the course of future constitution-making. (When the resolution on the federal institutions was passed, the faction of the leftist Social-Revolutionaries made two motions for amendment, the second of which ordered the Central Executive Committee to elaborate the principles of the constitution until the next congress. These principles were adopted by the Third All-Russian Soviet Congress). The Bolsheviks, at that time, were consciously preparing the basic law. This was evident, even before the leftist Social-Revolutionary faction made its motion, from a remark of Stalin, who said that the Decree contained the general foundations of the future Constitution. This Constitution was to be drawn up by the Central Executive Committee and submitted to the Congress for approval.

Why the Bolsheviks aimed at that time at a relatively rapid course of framing a constitution, was indicated by Gurvitch quite clearly in several instances: "... what must be laid down in the Soviet Constitution first of all is an expert plan of work, the scheme of building the state apparatus, and this ... must be done by a class which has no experiences, no routine whatsoever in this respect. This class has but a few experienced advisers,

<sup>14</sup> (Gurvitch, G. S.) Гурвич, Г. С.: *История советской конституции* (History of the Soviet Constitution). Moscow, 1923, p. 3.

and many desperate enemies."<sup>15</sup> At the Fifth All-Russian Soviet Congress which adopted the constitution, J. M. Sverdlov pointed out "how necessary it was to be methodical, organized and constructive in the period of the setting up of Soviets . . . In working out this constitution, we primarily kept in mind the requirements of establishing order."<sup>16</sup>

It seems, thus, that the building of the state apparatus was considered as the most important aspect of the constitution. Although there was a debate about the drawing up of a list of the workers' rights, the problem of state organization was given much more attention. In spite of these disputes, everybody was aware of the fact that the *Declaration on the Rights of the Toiling and Exploited People* was so comprehensive that no list of an altogether different nature was necessary in addition to it. Therefore, the complete reshaping of the state model presented a far more important problem.

What did this reshaping of the state model mean? In his very interesting book, Gurvitch pointed out the complexity of the problem. The main factor was not the fight against anarchist and syndicalist tendencies; it was rather what Gurvitch stressed in his afore-mentioned passage, the inexperience of the majority of the population. Correct and wrong, practical and unfeasible ideas about the building of the state apparatus were realized in central, as well as in local organizations. This was so because in most territories, under the circumstances of the Russian revolution, workers and their allies had to reach decisions alone. Therefore, the method of coordination of the Soviets' activities had to be used, which presupposed the gathering of experiences, related to the building of state apparatus on the widest possible basis.

However, the state machinery of the Soviet revolution took shape differently from that of other earlier revolutions of non-proletarian and non-popular character. That was why the establishment of local power presented a new problem in the framing of the constitution. Gurvitch writes the following in connection with this: "This act could not, and was not supposed to copy the bourgeois pattern, if only because of the circumstance that one of the main requirements to be met was to create a *general and compulsory framework for organizing the local state apparatus*."<sup>17</sup> The point in question was not simply an insignificant local administrative branch of the state machinery but it was rather local power, in respect of which it was declared just at that time that "it is the primary local state institutions that are truly sovereign."<sup>18</sup> The model of

<sup>15</sup> Ibid. p. 85.

<sup>16</sup> Sverdlov, Y. M.: *Selected Articles and Speeches, 1917-1919*, (In Hungarian), Budapest, 1950, p. 108.

<sup>17</sup> Gurvitch, op. cit. p. 4 (italics are mine, O. B.)

<sup>18</sup> Ibid. p. 52.

local organizations was just as important as the model of the central organization.

A novel problem was presented by the shaping of the completely new contents of *suffrage*. The framework of old bourgeois suffrage had to be discarded and replaced by a method of the actual exercise of power. The main point here was to ensure the exercise of the workers' power, i.e. the *real representation* of the working class and other working strata by guaranteeing the influence of urban workers on every level. It must be stressed that this institution of representation increased the influence of electoral groups by fixing—after long debates—a very short term of mandate for local Soviets, i.e. three months. The constituents could recall their delegates even within this term at any time, and could hold new elections. The consequence of this was that the composition of the supreme Soviet organs, i.e. of the congresses changed at the same time. Of course, in the case of new elections, the constituents could give new instructions to their delegates. It was emphatically asserted during the drafting of the constitution that the character of elections as single acts has to be eliminated and replaced by the workers' influence on representative organs, i.e. by real representation.

The separation of powers was another new problem in the course of framing the construction. In this respect, too, the principle of the sovereign power of the Soviets could not be restricted and therefore it was not possible to adopt any bourgeois form of the separation of powers between the legislative and the executive branches. Yet, the aforesaid requirement of accuracy and coordination did not allow any continued uncertainty in the separation of powers. New forms of solution were needed. As regards the central organization, what had to be considered in a different manner, was especially the division of labour between the Central Executive Committee acting as deputy for the Congress and the Council of the People's Commissars, heading the specialized administrative apparatus and further the cooperation among the lower level Soviets, the congresses of the Soviets and the organs of higher level in order to prevent the multiplication of concurrent spheres of authority.

A most interesting feature of this type of constitution-making was the attempt, practically from the outset to provide foundations for the organizational scheme based on the authority and organization of the Soviets of the lowest level (village and town Soviets). This means that these problems would have been primary in the organizational scheme. This had been the reflection of the views held concerning the source and exercise of sovereignty. In the final draft constitution, however, presented to the Fifth Congress, this order was reversed: the central organs were moved to the first place in the organizational part, followed by the congresses of Soviets, the delegates of the Soviets, the competence, then,

suffrage, and, finally, the procedure of election. This order was, thus, definitely contrary to the preceding drafts. Gurvitch is perhaps right when he states that this reversal was made possible by the rightness of preparatory work and by the fact that the committee regarded the local experiences as the basis of its activity. But it seems probable, too, that this formulation or sequence had a centralizing effect in the sense that it stressed the importance of central organs (e.g. Article 24: "The All-Russian Congress of Soviets is the supreme power in the Russian Socialist Federative Soviet Republic")—at the same time, however, the constitution declared the congresses of Soviets and Soviets to be the supreme organs of power in the respective areas. The following principles are characteristic of the state-organizational model of the constitution adopted by the All-Russian Soviet Congress on July 10, 1918:

(a) The state organization was a *uniform Soviet* organization. This was expressed by Article 10 of the Constitution as follows: "all power invested . . . in the entire working population of the country united in town and village Soviets." This means that a uniform Soviet organization took shape on the local level, and this is why Gurvitch told that the sovereign is the primary, local state institution. Still, these many local sovereignties are fused and as a result of indirect elections, supreme power, i.e. national sovereignty is concentrated in the hands of the All-Russian Congress of Soviets standing at the summit of the state organization. This quite logical structure, however, is turned into a homogeneous concatenation only by the indirect electoral system, by the indirect institution of congress of the Soviets. (All representative organs elected directly were called the "Soviets of deputies", all Soviet organs elected indirectly were "Soviet congresses".) Exceptions to this rule were found only in the smallest villages where this was possible and where the general meetings of the constituents possessed all the rights exercised elsewhere by the deputies of the Soviets. (Every Soviet and every congress of Soviets had supreme state power in the area of its activities.)

(b) The second characteristic of the model was that it was marked by the *real representation* of the working classes and strata in several respects. The constitution did not create any kind of "comprehensive" suffrage; it rather determined, even in two respects, who can participate—*among others* through taking part in elections—in the exercise of power. It was typical, too, that in the chapter dealing with active and passive franchise, this right was first treated positively, i.e. by defining first those social strata whose members had the right to exercise power also in this form. (Active and passive franchise was due on this basis to persons having completed their 18th year of age, or—according to Article 64, /1/—to younger persons as well, provided that the local Soviets lowered this age limit in a given territory with the authorization of the central power.)

The second enumeration (Article 65) was almost entirely of technical nature, since it facilitated the exclusion of exploiting and hostile elements from the exercise of political rights.

In this respect it was an important fact that the constitution interpreted *franchise* as the *form of exercising power* by the working class and by other working strata. It was rather significant that the primary Soviets, i.e. the town and village Soviets, were re-elected frequently, and that this re-election had its effect on the composition of the higher Soviet congresses through indirect elections. The regional congresses were made up of the delegates of the village Soviets, and the provincial and district congresses of the delegates sent by the regional and municipal Soviets. The district Soviet congresses and the municipal Soviets sent their delegates to the territorial Soviet congresses, while delegates of the provincial Soviet congresses and the municipal Soviets were sent to the All-Russian Congress of Soviets. Thus the municipal Soviets—the most important representative organs of the proletariat—obtained separate representation in the provincial as well as in the territorial congresses, and in the All-Russian Congress of Soviets and, moreover, in higher proportion in each case than the population of rural areas. It must be added that the lower congresses of Soviets also represented the towns. This also shows the great influence of the workers' representation. This form of indirect election therefore resulted in the real representation of the working class, that kept growing at the upper levels. We might as well say that the political rights of the workers were increasingly embodied in the power of the Soviets which were also numerically dominated by the working class.

The aforesaid unrestricted right of recall belonged to the conceptual sphere of "real representation." It belonged naturally, to the constituents who could make use of it against the town and village Soviet delegates. Recall involved automatic termination of membership in the higher Soviet congress, that meant that such a person was no longer eligible for delegation to the next congress of Soviets. This system of imperative mandate meant—not only theoretically, but also in practice—that the constituents could expect from their delegates to back their suggestions and electoral instructions in Soviet organizations of all levels. This provided the force of "real representation" in the constitution.

(c) It was characteristic of this Constitution that as a fundamental law it was mainly the *constitution* of the *Soviet organization* itself. This statement may be interpreted both in the negative and the positive sense. In negative terms this is so because of the fact that the constitution outlined only the model of organs of Soviet character, taken in a narrower sense. The basic law did not mention the organization of the judiciary, of the already existing supreme Economic Council. The reason for this may be found in the circumstance that, at this time, the principal aim was to

give statutory guidance and regulation primarily to the Soviets and so only this hierarchy was outlined.

The model of the constitutional Soviet organization was drawn up in sufficient detail, and comprised all the forms of the Soviet Organization. Part III of the Constitution laid down the rules for the All-Russian Congress of Soviets of the Workers', Peasants', Red Soldiers', and Cossacks' Deputies, for the All-Russian Executive Committee of the Soviets; and, for the Council of People's Commissars; it delimited the spheres of authority of the All-Russian Soviet Congress and of the Central Executive Committee; it defined the territorial congresses of Soviets, the Deputies' Soviets, and the principal rules regarding the powers of local Soviets. Part IV dealt with the active and passive franchise, with the electoral procedure, with the scrutiny and annulment of ballots, and with the recall of delegates. Part V dealt with budget law.

The most typical part of this model was, beyond doubt, the trio at the highest level of the state organization: the All-Russian Congress of Soviets, the Central Executive Committee, and the Council of the People's Commissars. While the Constitution declared (Article 24) that the Congress "is the supreme organ of power of the RSFSR", it characterized the Central Executive Committee as the "supreme legislative, directive and supervisory organ of the RSFSR" (Article 31) in view of the fact that "in the periods between congresses . . . it is the supreme organ of power of the Republic" (Article 30), i.e. the organ acting as deputy for the Congress. As regards the Council of People's Commissars, the constitution stated that it is "in charge of the general administration of affairs of the RSFSR". Despite the fact that this constitutional definition was absolutely clear, especially as regards the Central Executive Committee and the Council of the People's Commissars, a *shift of the spheres of authority* began at once (or, more exactly, continued, since legislative power was exercised by the Council of the People's Commissars already before the Constitution; e.g. the Decree on the Courts was issued by this body.) Gurvitch says that actual preponderance was shifted to the Council of People's Commissars not without internal struggle, but this did not suggest any friction between legislative and executive power.<sup>19</sup> The Central Executive Committee, which had general powers to act as deputy for the All-Russian Congress of Soviets (except for determining, completing and amending the main principles of the Soviet constitution; and in drawing or changing the boundaries of the RSFSR, in reducing its territory, on questions of relations with other countries, in declaring war and making peace, it could reach decisions only if it was impossible to convene the

<sup>19</sup> Ibid. pp. 66-67.

Congress) did considerable work, especially in the field of building up the Soviets. The Council of People's Commissars performed the function of concrete administrative leadership.

Otherwise there existed a close constitutional correlation between these two organizations, because: (a) both organs were instituted by the Congress (actually, the Council of People's Commissars was instituted by the Central Executive Committee during a recess of the Congress); (b) both organs were equally responsible to the Congress; (c) the Council of People's Commissars was responsible to the Central Executive Committee, too, and had to inform the Central Executive Committee of its decrees and resolutions without delay; the Central Executive Committee had powers to annul or suspend the implementation of any such decree or resolution; (d) the members of the Central Executive Committee, whose membership was limited to 200, either served on special commissions of the Committee, or were active in various departments, at commissariats; (e) special decrees and resolutions of general political importance issued by the people's commissars had to be submitted to the Central Executive Committee for approval, except for extremely urgent ones which could be implemented directly.

The specialized administrative apparatus was in the hands of the Council of People's Commissars. The 18 people's commissariats were headed by the people's commissars, who were members of the Council of People's Commissars. The people's commissars were assisted by collegia; the appointment of the members of these was confirmed by the Council of People's Commissars. A people's commissar was entitled to make decisions on the basis of his individual responsibility in any matter falling under the authority of the respective people's commissariats. He had to report to the collegium concerning such decisions. The members of the collegium had the right to lodge a complaint against such decisions with the Council of the People's Commissars, or with the Presidium of the Central Executive Committee. Such a complaint had no delaying or suspending force. The people's commissars and the boards were responsible to the Council of People's Commissars and the Central Executive Committee.

The question of the authority of the local organs of power was dealt with by the constitution in a skeleton regulation of their responsibilities. It was made the responsibility of the congresses of Soviets and the Soviets of all territorial units (and of the general constituent meetings of small villages): (a) to implement all directives of the superior organs; (b) to take measures for improving the cultural and economic standards of the given area; (c) to decide on issues which were of purely local importance; and (d) to coordinate the local activities of the Soviets in the given area. The Soviet organizations had wide powers of control. In addition, the

territorial and provincial congresses of Soviets and their executive committees enjoyed the right to abrogate decisions of Soviets functioning in the area of their jurisdiction. (They had to inform the organs of central power about such measures.)

According to Article 81 of the Constitution, it was up to the All-Russian Congress of Soviets or the Central Executive Committee to decide what revenues had to be collected by the central organs and by the local Soviets, respectively. The taxes needed to cover local needs were assessed by the Soviets themselves.

Pursuant to the Constitution, the organization of local power followed a tripartite structure. Both the congresses of Soviets and the delegates' Soviets elected executive bodies, the executive committees. The number of members in the territorial and provincial executive committees was high (25 was the upper limit); in smaller areas it was relatively low (20-10-5 members). The nature of their activities, needless to say, differed in every territorial unit. Considering that the territorial congresses had to be convened twice a year, the provincial and district congresses every three months, the congresses of the *okrugs* every month, whereas the city Soviets had to be convened every week and the village Soviets twice a week, it is obvious that the rights of the elected Soviet organs and of the executive committees inevitably differed from one another.

Article 63 of the Constitution also instituted other organs besides the congresses of Soviets, the delegates' Soviets, the general meetings of the constituents in small villages, and the executive committees. These were subdivisions, headed by supervisory departments charged with "attending to the tasks faced by the organs of Soviet power." These sections were subordinate to the village and city Soviets, on higher levels to the executive committees.

The Soviet Constitution of 1918 strictly regulated the model of the organization and functions of organs of an expressly Soviet character. This is important, among others, because an attempt was made to solve certain problems of authority by first defining the relationship of organs within the state hierarchy. (I refer here to the statement I made in my former work,<sup>20</sup> namely, that the unrestricted authority of the All-Russian Congress of Soviets was laid down in the Constitution (Article 50), its explicit authority in Article 49, and its exclusive authority in Article 51, whereby an example was set for future socialist constitution-making.)

During the drafting of the Constitution, it was usually kept in mind to incorporate in the fundamental law the organizational forms which had been established and adopted in general. As a consequence, we may regard the Constitution as *the incorporation of already existing experiences of*

<sup>20</sup> Bihari, O.: *Socialist Representative Institutions*, Budapest, 1970, p. 75.



*the Soviets into a uniform statute.* (This does not apply only to the Russian territory, since the regulation adopted on April 30, 1918, enumerates the same Soviet organizations in respect of the Turkestan Soviet Socialist Republic: the Soviet Congress of the workers', soldier', peasants' and the Moslem dekhans' deputies as the supreme legislative body, the Central Executive Committee as the permanent supreme legislative body, the 16-member Council of People's Commissars as the organ of implementation and administration, as well as the local organs of power, i.e. the Soviets and executive bodies.)

### **3. Changes in the State-Organizational Model up to the Formation of the Soviet Union**

The effects of the constitutional model of 1918 deserve attention in two respects:

(a) Since it only outlined the Soviet organization in the narrow sense, it necessarily made possible the institution on a non-constitutional level of other state organs of utmost importance for economic and other reasons. What I have in mind here is not only provisional, temporary institutions which had to be set up under the circumstances of war communism and civil war, only to become unnecessary soon after (e.g. the Village Committees of Poor Peasants which in June 1918 dealt with food provision instead of the village Soviets where necessary or the Worker-Peasant Defence Council in November 1918 which was given extraordinary and full power to carry out defence tasks). The status rights and organization of the Supreme Economic Council were regulated anew. From that time on, this organ operated as the economic department of the Central Executive Committee and also in coordination to the Council of the Peoples's Commissars (i.e. actually under dual control). It regulated the activities of all enterprises and the production as well as the distribution of the products. The local and territorial economic councils worked in subordination to it. The typical forms of that time can be observed in its work. The members of the Council were appointed for six months. The plenum met at least once a month; it was headed by a 9-member presidium, of which 8 were elected by the plenary session of the Supreme Economic Council with subsequent approval by the Council of People's Commissars; the chairman, who had the rights of a people's commissar, was elected by the Central Executive Committee.

It is only natural that the constitutional organization had to be continuously complemented, since institutions outside the Soviet organization proper were set up already before the constitution. (An example for that is the Supreme Economic Council which was confirmed by the

statutes of the Council of People's Commissars.) I shall mention later that the consolidation of the constitutional organization involves the inevitable consequence that organs whose legal status ought to be defined in the constitution, are regulated on a much lower level. Here, however, we face a different case. In the course of preparing the constitution, requirement was often voiced not to make the constitution too rigid and to find ways of regulating important constitutional organs and institutions even on a lower level. (This was indicated also by the fact that the Constitution did not deprive the Central Executive Committee of its constituent powers, except for laying down, completing or amending the main principles of the constitution).

(b) The effects of the Constitution of 1918 may also be observed in other fields. As the first socialist constitution, it had considerable influence on the emerging socialist state organizations of the peoples living outside the original Russian territory. (The Russian legal provisions had e.g. a great influence on the organizational pattern of the young Ukrainian Soviet power already before the adoption of the Constitution.)

The most important field of interest for Hungarian scholars is the *Declaration on the Rights of the Toiling and Exploited People*, and the influence of the Constitution on the constitutional model of the Hungarian Soviet Republic. The provisional Constitution—of April 3, 1919—and the final one—of June 23, 1919—set out from the Russian experience and relied on it for the most part. Like in the Russian Constitution, for example, only the Soviet organization proper was outlined, while the organs of the judiciary were set up by decrees of the Revolutionary Governing Council (the revolutionary tribunals, the National Revolutionary Military High Court of Justice, the courts of petty offences and the labour courts, among others). The provisional Constitution established the following state organizations: the national convention of the workers', soldiers' and agricultural labourers' councils (this body exercised supreme power); the local, i.e. village, town, district and county councils, as well as their executive committees (for managing affairs directly). Suffrage was indirect and not universal. The Revolutionary Governing Council was part of the central organization. The state-organizational model was enlarged in the Constitution of June 23: it consisted of the national convention of the confederate councils (this exercised the supreme power, and its general and exclusive spheres of authority were enumerated in the Constitution); the confederate central executive committee (between sessions of the national convention, this was the chief executive organ and also exercised supreme legislative, executive and judicial power); the Governing Council, the People's Commissariats; the Economic Council, as well as, among the non-central organs, the village, town, urban district, rural district and local councils and their executive committees (for direct administration). It is

clear from the Hungarian Constitution, what a great influence the Russian-Soviet solutions exerted on the constitutional organization at that time. There were of course, smaller or greater differences in the everyday state-construction of the lower level, but such differences hardly occurred on the constitutional level as it was this level where the largest body of information—also in the form of printed data—was available about Russian policies.

The first constitution adopted in a nationality area was the first Belorussian Constitution of February 1919. Its state-organizational scheme more or less resembled the Russian organization: the Soviet Congress of the Workers', Peasants' and Red Soldiers' Deputies was the supreme organ of power which had to be convoked for an ordinary session at least twice a year; the Central Executive Committee was the supreme legislative, disposing and controlling organ with a membership of not more than 50. It was a novel feature that the Central Executive Committee had a minor and a major presidium. The Constitution created these organs to perform administrative tasks, among others; and it mentioned the workers' and peasants' government but incidentally. (This Constitution was revised in December 1920). The Ukrainian Constitution of March 1919 defined the spheres of authority in a more detailed fashion by enumerating—though not exhaustively—all state affairs and by authorizing the central Soviet organs to define further spheres of authority. The central organs were the following: the All-Ukrainian Congress of Soviets of the workers', peasants' and red soldiers' deputies, the Central Executive Committee and the Council of People's Commissars. The Central Executive Committee is mentioned in this Constitution definitely as an organ of delegated powers with full jurisdiction, except for the right to draw up a constitution, and the right to declare war and make peace. The People's commissariats worked as departments of the Central Executive Committee. The Council of People's Commissars was composed of the heads of departments of the Central Executive Committee, and of other persons elected by the Council. The local organs of Soviet power consisted of the Soviets of towns and villages and their executive committees, and of the provincial, areal and regional congresses of Soviets and their executive committees.

The aforesaid amendment to the Belorussian Constitution introduced a number of new features. Thus, the Council of People's Commissars and the People's Commissariats were set up by the Central Executive Committee. The 15 heads of the People's Commissariats were members of the Council of People's Commissars (together with the head of the Economic Council, the head of worker and peasant control, and the leader of the extraordinary committee of state security among them). The Central Executive Committee had a presidium made up of a chairman and 4

members. The chairman of the Central Executive Committee and its presidium was at the same time head of the Council of People's Commissars. The presidium acted as deputy for the Central Executive Committee between sessions.

The Azerbaidzhan Constitution of May 1921 further extended the provisions related to the state organization (the large number of provisions on the Soviets, and on the executive committees of the congresses of Soviets was rather striking in this case). One novel clause was Article 52 of the Constitution which did not permit the setting up of deputies' Soviets in localities with less than 300 inhabitants; these elected Soviets jointly with neighbouring inhabited areas, or local matters were decided at general meetings of the inhabitants. Pursuant to Article 54 of the Constitution, the deputies' Soviets were thereafter elected only every six months.

The Armenian Constitution of February 1922 went even further in the detailed outlining of the state organization. Among others, it dealt in a special chapter with the rights and duties of the delegates to the Soviets and their congresses and of the members of the executive committees. Within the generally accepted central state organization, it assigned a new function to the Central Executive Committee: it was not only the supreme legislative and executive body, but, at the same time, a governmental organ of control. In respect of local organs the constitution provided that in localities with less than 300 inhabitants only the general assembly of the constituents could act instead of the deputies' Soviets; executive work was made the responsibility of an elected chairman.

The most detailed constitution of the period was the Georgian Constitution of February 1922 which consisted of 134 Articles. This Constitution included state organs which were not mentioned at all, or only incidentally, in the constitutions discussed so far. Some of these were mentioned in connection with the organization of state administration, or with the Council of People's Commissars or the people's commissariats. The system of worker and peasant control served the real, direct, prompt and purposeful control in the economic and administrative fields. The Supreme Economic Council, working with the Council of People's Commissars, directed and coordinated the activities of the economic People's Commissariats on economic matters, and operated as a committee of the Council.

The Georgian Constitution is remarkable also because the deputies' term of mandate was extended to one year. This increase is characteristic of the stabilization of the Soviet organs; political consolidation rendered frequent re-elections unnecessary, while the right of recall and new elections was reserved for the constituents.

As regards the model of state organization, the most important innovation in this Constitution was the inclusion of a new chapter on the

basic principles of the judiciary, whereby the questions pertaining to the administration of justice were put on the level of constitutional regulation for the first time. Article 96 explains the reasons for the action in a very interesting way: "It is recognized that in the revolutionary process, and on the basis of the realized economic policy, new forms find expression in the laws and enjoy the protection of the court system and firmly safeguard the citizens' rights. The Georgian Soviet Socialist Republic therefore establishes a uniform system of people's tribunals which will function in rural districts or urban districts, each with a permanent judge and a group of two or six people's assessors on duty." The Council of the People's Tribunals was instituted as the court of appeal in the capital city of the Republic. The Constitution declared the principle of the exclusiveness of judicial authority by the courts, and prohibited all other organs from depriving the courts of this authority.

The changes in the constitutional model between 1918 and 1922 as reflected in the constitution-making of the Soviet republics, may therefore be described in the following:

(a) A considerable *specialization* and *division of labour* took place in the central state organization. In addition to elected organs with a large membership, smaller operative, leading bodies, called "presidiums" or by other names, emerged. The number of people's commissariats and of other committees of similar rank increased.

(b) The increase in the number of organs active in the *economic* field, and the division of their functions is especially remarkable. This reflected, in the beginning the effects of war communism but also indicated the increasing activity of the socialist state in the domain of economic construction.

(c) The *term of office* of the Soviet deputies grew longer and longer as a result of the stabilization of elected Soviet organs, and of the state organization in general. This circumstance had an effect not only on the state organization in general. This circumstance had an effect not only on the Soviets of the village and town deputies, but also on the indirectly elected congresses of Soviets as their membership became permanent, as a consequence of which their normative activities developed along firmer and more permanent lines.

(d) The number of organs covered by the constitutional model expanded. While in 1918 only Soviet organs, taken in the strictest sense of the term, were figuring in the Constitution, in subsequent years several administrative organs which emerged as the outcome of specialization also appeared in the Constitution, and, finally, the judiciary was included in the Georgian Constitution. This latter change reflected a new attitude toward legal and judicial work taking shape after the first Decree on the Courts.

#### 4. The State-Organizational Model of the Constitution of 1924

The establishment of the Soviet Union, the drafting of constitutions on federal and later on republican levels, served as a good opportunity to reconsider and modernize the constitutional state organization. But it was precisely in respect of the state-organizational model that longer and more thorough deliberation was necessary. This is also evident from the fact that the Compact on the Union of the Soviet Socialist Republics, concluded about a year prior to the adoption of the constitution, was still rather scanty concerning the organizational scheme. According to the Compact, the supreme organ of the Soviet Union (the term *organ*, and not *vlast*, was used hereafter in drafting the constitution) was the Congress of Soviets of the Soviet Union, and the Central Executive Committee of the Soviet Union during recesses of the Congress. Delegates to the Congress of Soviets were elected by the provincial congresses of Soviets. The Central Executive Committee had 371 members; they were elected in proportion to the population of the republics. The Central Executive Committee elected its 19-member Presidium; four of the members had chairmanship functions in conformity with the number of the Union Republics. The presidium was the supreme organ of power of the federation between the sessions of the Central Executive Committee. The Council of the People's Commissars was elected as an executive organ by the Central Executive Committee. The Council had a chairman, deputy chairmen, and members (9 people's commissars, and the chairman of the Supreme Economic Council). The Supreme Court was instituted, in coordination with the Central Executive Committee, to exercise supreme judicial control; the organization of the United State Political Directorate (OGPU) was established in coordination with the Council of the People's Commissars. The Compact enumerated the people's commissariats of the Union Republics, and regulated their relations with the People's Commissariats or the Union. The Compact contained yet rather vague formulations in respect of some institutions which, as a result of the above-mentioned considerations, were firmly established by the Constitution of 1924.

The most important feature of the federal Constitution adopted on January 31, 1924, was that the first of its two parts (Declaration on the Formation of the Union of Soviet Socialist Republics, and the Compact on the establishment of the USSR) dealt with the reasons and principles of the Establishment of the Union while the second part was devoted solely to *state-organizational themes*. While major parts of the 1918 Constitution of the RSFSR, and of the 1936 Constitution of the Soviet Union, were devoted to non-organizational questions, the agreement on a joint federative organization and the rise to prominence of the corresponding spheres

of power required a different socialist constitutional structure. This constitution assumed—we might say—an organizational nature. This term is to be understood in a broad sense, since the definition of the spheres of power connected with the organizational structure guaranteed, among others, the state authority of the Union Republics, including the right to national self-determination. (Articles I and II of the section including the Compact, defined the authority and the sovereign rights of the Union and its organs, and of the Union Republics and their organs respectively). The following Articles with the exception of Article XI which contained regulations on insignia and the capital city differed from earlier constitutional provisions, as the topic they dealt with outlined the principal state-organs—federal and republican—their forms and their division of labour. This Constitution was, therefore, mainly of state-organizational nature, and represented a novelty in the elaboration of socialist constitutions.

On the other hand, I would like to note that the Constitution of 1924 contains only the scheme of the central organs. Since the issues concerning the local Soviets were regulated by the Republics, the respective provisions are not to be found here, but in the constitutions of the Republics. The constitutions of some Republics desired, in subsequent years, a new model of local Soviets. Yet one of the consequences of this structural change—i.e. the absence of a model for local organs—was that the earlier formula about the uniform sovereign rights of “local and central power” was completely missing from the Constitution of 1924. It was replaced by the definition of the spheres of power expressed in the form of the various rights of the supreme organs. (Such an expression was, for example, in Article 1 of the Compact “. . . come under the authority of the Union of Soviet Socialist Republics *represented by its supreme organs . . .*” (italics are mine, O.B.) The sovereign was conceived of in a much more centralistic way than before. This conception became characteristic of most socialist constitutions from that time on. While in the context of indirect electoral system this was justified by the concept that the higher congresses were actually unions of the Soviet organs standing below them in the hierarchy (accordingly, the Soviet Congress of the Soviet Union is a union—in indirect ways—of all Soviets and congresses of Soviets in the territory of the Soviet Union), the assignment of the will of the entire population to the highest standing organ was considered as the source of sovereign rights when the direct electoral system was introduced.

The Constitution of 1924—just as the preceding Constitution of 1918—presented the construction of the Soviet state organization from the top down but following already its federative structure. Typically, the constitutional sequence of these organs reads as follows: the Congress of

Soviets of the Soviet Union; the Central Executive Committee of the Soviet Union: the Presidium of the Central Executive Committee; the Council of the People's Commissars of the Soviet Union; the Supreme Court of the Soviet Union (the Article dealing with this organ contains a special but not a separate reference to the Procurator of the Supreme Court of the Soviet Union); the people's commissariats of the Soviet Union (i.e. separated from the Council of the People's Commissars); the Unified State Political Administration (OGPU); and—in the Article dealing with the Union Republics—the Soviet congresses, their central executive committees, the presidiums of the latter, the councils of the people's commissars, and the people's commissariats of the Republics. This order characterizes to some extent the hierarchic arrangement of these organs.

The basic theorem of the constitutional organization is that in the Soviet Union the supreme organ of state power is the Congress of Soviets and—between its sessions—the Central Executive Committee which is however, bicameral as a consequence of the federative structure. The Soviet Congress was not elected by the Union Republics, but by the town Soviets and by the provincial Soviet congresses (non-urban delegates were elected by the Soviet congresses of the Republics only if there were no provinces in their respective territories). But the main principle here, too, was to provide for a preponderant representation of the towns. In the activity of the Soviet Congress at that time the securing of the representation of the working class was of greater importance than any other aspect (e.g. proportionality in the representation of nationalities, which was transferred to the Central Executive Committee). The regular sessions of the Congress of Soviets had to be convoked at least once a year; the relatively infrequent sessions show that the deputizing authority delegated to the Central Executive Committee rendered it an organ of very wide power.

The Central Executive Committee acted as a bicameral organ. The Soviet of the Union was elected by the Congress itself from among the delegates of the Republics, in proportion to the size of their population. The other chamber of the Central Executive Committee, the Soviet of Nationalities, consisted of 5 delegates from each Union Republic, and Autonomous Republic, and of 1 delegate from each Autonomous Region in the Russian Republic. (The two Autonomous Republics and the three Autonomous Regions outside the RSFSR were represented by 1 delegate each in the Soviet of Nationalities). The composition of the Soviet of Nationalities was approved as a whole by the Congress of Soviet of the Soviet Union. The Constitution emphasized the legislative powers of the Central Executive Committee; it concentrated in the hands of the Central Executive Committee the statutory formulation of those issues which



contained general norms for the political and economic life of the Soviet Union, and of those which brought fundamental changes to the prevailing practice of the state organs of the Soviet Union.<sup>21</sup>

The regular sessions of the Central Executive Committee had to be convoked three times a year. Bills had to be passed in both chambers; if a difference of opinions occurred, a conciliation committee tried to resolve the disagreement between the two chambers. If this attempt failed, the question was submitted to a joint session, after which the problem could be submitted to the Congress of Soviets. The two chambers voted separately in the joint sessions. The Central Executive Committee had 4 elected chairmen in accordance with the number on Union Republics. Each chamber elected a 7-member presidium. The Central Executive Committee was responsible to the Congress of Soviets.

It was in this Constitution that the third level of the legislative organization was laid down for the first time. Pursuant to Article 29, the Presidium of the Central Executive Committee was the highest legislative, executive and directive organ of authority of the Soviet Union between the sessions of the Central Executive Committee; the Presidium was responsible to the Committee. Although this definition of functions mentions (and only this definition does) execution and administration in addition to legislation, we are confronted with the typical legislative authority of that era in the enumeration of duties in Articles 30 to 33 of the Constitution. A deviation from this can only be found in Article 35 which gives the Presidium the right of decision in disputes between the federal Council of the People's Commissars and the federal people's commissars, and between the federal central executive committees and their presidiums. The Presidium was a smaller body: it consisted of 21 members, but two-thirds of these were made up of the members of the presidiums of the two chambers.

The Constitution established an organization of a different type in addition to the three levels of legislative system (Congress, Central Executive Committee, its Presidium). The Constitution included another organization, too: this was the Council of the People's Commissars of the USSR. The constitution, in defining it, used the expression "executive and directive organ" adding that it was an organ of and even created by, the Central Executive Committee. The Constitution emphasized the subordination of the Council of the People's Commissars to the Central Executive Committee and its Presidium.

The Constitution made a step forward in relation to the preceding models also in that it regulated in details—at least on the highest level—the judiciary. The reason for instituting the Supreme Court was given in

<sup>21</sup> Point 18.

Article 43, stating that it was necessary to confirm revolutionary legality. But the status assigned by the constitution to the Supreme Court was under the Central Executive Committee of the Soviet Union. Nevertheless, the jurisdiction of this Court deserves a brief discussion. Namely, it is obvious that the intention of the authors of the constitution was not to create a simple court of appeals; the aim was to institute, to a certain extent, a court of competencies, a court for constitutional federal and official affairs. The duties of this court consisted, besides issuing binding interpretations of the law, in the following: it could revise civil judgments and criminal sentences passed by the supreme courts of the Union Republics, and if they were contrary to federal legislation, or violated the interests of other Republics, it could submit a protest on legal grounds to the Federal Central Executive Committee; upon request by the Federal Central Executive Committee, it gave expert opinion on the constitutionality of certain provisions of the Union Republics; it resolved legal disputes arising between the Union Republics; it instituted proceedings against high ranking federal officials for crimes committed in office.

This enumeration is instructive because it shows on the one hand, the sharp-cut problems of jurisdiction in questions of competency in the given federative structure (first of all because the parallel functioning and legal relations of many organs not superior or subordinate to one another in the hierarchy may be involved here); on the other hand, because it is here that conflicts between the constitution and the legal acts of sovereign organs are most likely to arise in the most complex manner. As a matter of fact, it appears from the constitutional regulation of 1924 that the problems of "*balancing*" arise almost "*instinctively*" on the *constitutional level and among the spheres of power*. In such cases the most important issues were not the legal disputes between Republics vested with equal rights; it is rather the practical implementation of the delimitation of basic competences laid down in the constitution, i.e. those of federal legislative powers and those of the rights of the Republics. As these are, in fact, questions of the constitutional separation of power—in a context where the sovereign rights of the Republics are to be protected—two forms of solution present themselves:

(a) The solution of absolute centralization in which on the basis of a fictitious hierarchy, the right of decision is assigned to the central (federal) state organ involved in the collision. (I use the term "*fictitious*" because the federal treaties did *not* superordinate any of the federal organs to the republican organs with general validity, but divided the supreme state authority between the two organizations.)

(b) If possible, an organ is found which has no direct interest in the dispute over competence, and can then be vested with right of decision or recommendation which must at least be taken into consideration by the

organ making the decision. Although the Soviet Constitution of 1924 did not draw all consequences from the federal structure in this respect, this experiment to shape a constitutional model already indicates the above consideration.

According to the Constitution, the Supreme Court acted as a plenum and also through the civil, criminal military and military transport collegia. The procurator (and his deputy) acting in coordination with the Supreme Court was appointed by the Presidium. The function of these procurators consisted in making recommendations and in conducting prosecution. If the procurator disagreed with the decisions of the plenum, he could submit a protest on legal grounds to the Presidium of the Central Executive Committee.

The functioning of the Supreme Court was limited by a provision of the Constitution (Article 47) whereby proceedings could be started—within the sphere of jurisdiction of the Supreme Court—only upon indictment by the Central Executive Committee of the Soviet Union, by its Presidium, by the procurator of the Supreme Court of the Soviet Union, by the procurators of the Supreme Courts of the Republics, and by the federal OGPU (Unified State Political Directorate). The plenum was authorized to create special boards for trying civil or criminal cases which affected two or more Republics, as well as for proceedings against members of the Federal Central Executive Committee and of the Council of People's Commissars. But such proceedings could be started in each case only on the basis of a resolution of the Central Executive Committee or its Presidium.

Although a very close personal and jurisdictional connection existed among the individual People's Commissariats and the Council of the People's Commissars, the Constitution dealt with the organizational and jurisdictional questions of the people's commissariats separately. The Constitution defined their duties as consisting in the direct guidance of the administrative branches under the competence of the Council of People's Commissars. Accordingly ten People's Commissariats exercised their functions through two different media of control. The federal people's commissariats were controlling their respective branches in a uniform manner in the entire territory of the Soviet Union. Their delegates were active in the Republics. These were the people's commissariats for foreign affairs, for military and naval affairs, for foreign trade, for transport, and for postal and telegraphic matters—5 in all. The republican organs of the unified people's commissariats were the commissariats of the various Republics and had similar names: the Supreme Economic Council, the commissariats for food, labour, finances, and for the worker and peasant control. (No federal people's commissariats were organized for the following branches: agriculture, internal affairs, justice, cultural affairs,

health, social services. People's Commissariats were set up for these branches in the Union Republics, considering that they were not given any jurisdiction by Article 1 of the Constitution or only the basic principles of legislation were laid down for them by union legislative organs.)

The people's commissariats were headed by the members of the Council of People's Commissars. A collegium was working under their chairmanship, the members of which were appointed by the Council. The constitution emphasized the individual authority of the people's commissars: matters under the jurisdiction of the commissariat could be decided by him personally. If the collegium disagreed with such decisions, the collegium or any of its members could lodge a complaint against the commissar's decision with no delaying effect. The federal people's commissars were responsible to the Council of People's Commissars, as well as to the Federal Central Executive Committee and its Presidium.

The Constitution of 1924 devoted—for the first and last time in the history of Soviet constitution-making—a special section to the Unified Political Directorate (OGPU) which was created to combat political and economic counter-revolutionary espionage and banditry, by integrating the revolutionary efforts of the Republics. The OGPU worked subordinated to the Council of the People's Commissars of the Soviet Union, and the head of the OGPU attended the Council's meeting in an advisory capacity. Delegates of the OGPU worked in subordination to the Councils of People's Commissars of the Republics. This organization was strictly centralized. The Constitution laid down in this case that OGPU organs operated also on a local level. It was in reference to the legality of OGPU activities that the Constitution mentioned for the first time as a new institution the procurators' supervision in the interest of legality. This right was vested in the Procurator-General of the Supreme Court of the Soviet Union by the Constitution (Lenin, in his letter to the Political Bureau in May 1922, already raised the idea of extending the procurator's function in this respect).<sup>22</sup> On May 28, 1922, the Central Executive Committee adopted a regulation providing for the organization of procurators' offices within the People's Commissariats of Justice to be headed by the Commissar of Justice as the Procurator of the Republic. Thus the Procuracy did not become a separate organization. The regulation of November 23, 1923, of the Presidium of the Central Executive Committee made no changes in this organizational scheme. It was evident therefore, that no uniform organizational and jurisdictional pattern of the procurator's office was included in the text of the Constitution.

<sup>22</sup> Lenin, V. I.: *Collected Works*, Vol. 33, Moscow, 1973, pp. 363–367. (“‘Dual’ Subordination and Legality”).

The insertion of the OGPU in the text of the Constitution shows that in accordance with the historic necessity in certain eras the constitution must provide new points of emphasis within the state-organisational model. This phenomenon, which may be considered extraordinary (i.e. putting emphasis on state security in a special Article of the Constitution) shows that this organization was of special importance at that time. This means that the constitutional model of the state organization was supplemented in this case with elements which were later no longer kept on the constitutional level, among others, because of organizational changes.

The last element of the constitutional model of 1924 is to be found in Article 10 dealing with the state organization of the Union Republics. However, this Article contained only an outline of the central organs of the Union Republics, since a more detailed regulation was provided for in the constitutions of the Republics. (The questions of the local Soviet organization were also dealt with in these constitutions.)

Thus, the central organs of the Union Republics were the following: the Congress of Soviets of the Republic, its Central Executive Committee between sessions of the Congress, and the Presidium of the Committee between sessions of the latter (the supreme organ of power); the Council of People's Commissars which was set up as an executive organ by the Central Executive Committee (the Council consisted of a chairman, deputy chairmen, the chairman of the Supreme Economic Council, and 10 people's commissars; pursuant to a resolution of the Central Executive Committee, the deputies of the federal People's Commissars for foreign affairs, military and naval affairs, foreign trade, transport, postal and telegraphic affairs attended the sessions of the Council in an advisory or voting capacity). The people's commissariats of the corresponding branches in the Republics were obliged to implement the instructions and guiding principles of the united people's commissariats.

The Constitution of 1924 represented an incomplete model inasmuch as it did not deal with the local organs of state power. On the other hand, the federal Constitution of 1936 devoted albeit briefly, an entire section to this part of the state organization. The views held in 1924 and later on regarded the regulation of the structure and power of the local Soviets to be entirely within the authority of the Republics. Consequently, the pertinent part of the state-organizational model must be inferred from the constitutions of the Republics. This does not apply to the April 1925 Constitution of the Transcaucasian Socialist Federal Soviet Republic, because it did not regulate the system of local Soviet organs on the level of its constitution; what I have in mind is the Constitution of May 1925 framed by the Ukrainian SSR and the RSFSR, the Constitution of March 1927 framed by the Turkmenian SSR, the Constitution of April 1927

adopted by the Belorussian SSR, and the Constitution of February 1931 adopted by the Uzbek SSR.

The period between 1924 and 1936 is anyway characterized by the emergence of new conceptions and organizational forms behind a seemingly stable constitutional state organization. These appeared—in a way characteristic of Soviet legislation—in a variety of sources of law and statutes, but their results were later at least partly manifest also on the constitutional level.

## **5. Changes between 1924 and 1936**

Following the adoption of the Federal Constitution of 1924, considerable progress was made in the establishment of state organization. New constitutions were adopted by the Belorussian, Transcaucasian, Ukrainian and Russian Republics in 1924 and 1925; these fixed the new constitutional model of the state organization, and the two latter constitutions also fixed the model of local organizations. Interesting features can be observed in their texts, although in their main characteristics, they necessarily resemble the Constitution of 1924.

The first constituent act consisted of a virtually total amendment of the state-organizational section of the Belorussian Constitution in March 1924. Accordingly, the Central Executive Committee was constituted by the congresses of Soviets; it numbered 120 members and 30 substitute members (so-called candidate members). The Presidium of the Central Executive Committee included a chairman, a secretary and 7 members. According to this amendment, the chairman of the Presidium was no longer chairman of the Council of People's Commissars. The composition of the Council of People's Commissars—"the executive organ of the Central Executive Committee"—was changed to fit the federal constitution: the 15 commissariats and commissars were replaced by 9 (the federal people's commissariats were omitted from the enumeration).

A new constitution was adopted for the Transcaucasian federation in April 1925. The tripartite division of the central legislative organization was the same as in the federal system.

The Ukrainian Constitution formulated a much broader model of state organization. (The constitution was adopted in May 1925). It enumerated in detail the powers of the Congress of Soviets and of the Central Executive Committee. The structure of the central organs, corresponded to the system laid down in the federal constitution. It was, however, in this fundamental law that the local Soviet organs figured under the general collective term "organs of local authority" for the first time after the Constitution of 1924. The local congresses of Soviets functioned, accord-

ing to the Constitution, only in the districts. They were elected by the town, village and settlement Soviets, as well as by the units of the Red Army and Navy, according to the proportions determined by the Central Executive Committee. The Soviet congresses of the *raions* elected their own executive committees. They were responsible to the electing organs, to the Ukrainian Congress of Soviets, to the Central Executive Committee and its Presidium, and to the Council of the People's Commissaries alike (dual subordination!). Between the sessions the work of the executive committees was carried out by the presidiums. The deputies' Soviets were active in towns, settlements, villages and in the districts of major towns. Their mandate was valid for one year. The deputies' Soviets elected an executive committee or a presidium to carry out their daily routine work. The Constitution delineated the guide-lines for the activities of the Soviet organs in a few paragraphs, but these contained no substantial regulation of the spheres of power. The regulation of suffrage was the same as in the federal rules.

The Russian federation framed its new Constitution also in May 1925. One of the characteristics of this Constitution was the attempt in Part II to regulate the powers of the central legislative organs. So, it laid down the sovereign authority of the All-Russian Congress of Soviets (comprising the definition of the constitutional principles, the final approval of partial amendments provided that these were adopted by the Central Executive Committee in the periods during recesses of Congress and, finally, the approval of the constitutions of the Autonomous Socialist Republics), and the powers shared with the Central Executive Committee. Local organizations were dealt with in a special section entitled "On local power". Local congresses of Soviets, functioned in every territorial unit, except for towns and communities where deputies' Soviets were elected. Both the local congresses of Soviets and the deputies' Soviets set up their own executive committees which acted as the supreme organs of local Soviet power in the period between the sessions of the congresses, i.e. they were substituting organs at the same time. The executive committees were represented by their presidiums. Branch sections were active in subordination to the executive committees.—One of the special features of the Russian Constitution was that, like the Constitution of 1918, it contained no provisions on the judiciary, or on the procurators, departments which worked together with it.

The activity of framing the Constitution of 1924–25 was completed by the amendment of the Constitution of the Soviet Union; this was rendered necessary by the admission of the Turkmen and the Uzbek Republics, and it inevitably resulted in organizational changes. For example, the fixed membership of the Federal Council was abolished, and the Constitution declared that every Republic must be represented by

deputies in proportion to its population in this chamber. From that time on, every Union and Autonomous Republic was represented in the Nationality Council by 5 delegates each, and every Autonomous Territory by 1 delegate. The presidiums of the two chambers consisted of 9 members each. The number of members in the Presidium of the Central Executive Committee and in the Supreme Court of the Soviet Union was raised alike.

Meanwhile, however, important changes took place at the non-constitutional level in the division of labour among state organs. An instruction issued in July 1924 on the Supreme Court of the Soviet Union contained a special provision on the protection of *legality*: the procurator of the Federal Supreme Court and the procurators of the Union Republics were henceforward given an initiative role in this field.

The next period of constitution-making began in 1927, immediately after, and as a consequence of, the formation of the new Republics. The model of the central organization of the Turkmen Constitution was traditional. An interesting change was that the regular session of the Soviet Congress of the Republic had to be convened once every other year. The new Belorussian Constitution of 1927 introduced no new elements to the constitutional model.

A further amendment of the Constitution took place in the federation in April 1927. According to this, the Congress of Soviets of the Soviet Union had to be convened in ordinary session once every other year. The composition of the people's commissariats underwent a change as well. It was characteristic here that in 1919, owing to the requirements of collectivization, a united agricultural People's Commissariat was created within the federal Council of the People's Commissars; this was a typical example of how a task, regional until then, became a national problem as a result of socio-economic changes, and how it found expression in the field of organization.

The last republican constitution preceding the adoption of the Federal Constitution of 1936 was the Uzbek Constitution of February 1932. Its organizational scheme was uniform with those of the earlier adopted constitutions.

The institutional establishment of the *protection of socialist legality* took place in June 1933, in a non-constitutional way. Based on a resolution of the Central Executive Committee and of the Council of People's Commissars, the Procurator's Office of the Soviet Union was created; on the one hand, it supervised the observance of the constitution and other statutes of the government by central and local organs; on the other hand, it supervised the uniform application of the law by the courts, further, the activities of the OGPU, of the militia, and the penal institutions. The organization supervising socialist legality thus became



detached from its old mother institutions, the courts, and worked as an independent organization on the basis of a special division of labour.

The amendment of the Federal Constitution in February 1935 assigned an important role to the procurator's organization in the central state-organizational model. This is evident also from the fact that the name of this organ is included in the title of Article 7 ("On the Supreme Court and Procurator's Office of the Soviet Union"). The functions of the Procurator's Office were summed up as follows: ensuring the observance of the constitution and of the government orders by the federal and state organs and, by the local organs of power; supervision over the correct and uniform application of law by the courts; assistance to crime control; supervising the legality of the activities carried out by the organs of the ministry of internal affairs; directing the Procurator's Offices of the Union Republics; submitting appeals (protests on legal grounds) against rulings of the Supreme Court, in case of disagreement, to the Presidium of the Central Executive Committee of the Soviet Union. Thus the central model of the Procurator's Office performing the supervision of socialist legality, was regulated on the constitutional level.

The amendment to the constitution expanded the organization of the Supreme Court. The following collegia were instituted, in addition to the plenary session: the collegium for judicial supervision, the civil and criminal, the military, railway and the water-transport collegia and a special collegium.

Also the organization of the people's commissariats was changed. 12 all-union and only 3 unified People's Commissariats remained in the federal apparatus. 9 People's Commissariats had to be organized in the Union Republics (the State Planning Board joined them). The collegia of the People's Commissariats were replaced by councils at least half of whose members were representatives of local organs and industrial units.

The 7th All-Union Congress of Soviets simultaneously adopted the following motions recommending some fundamental changes in the constitution: a) the further democratization of the system of suffrage, i.e. the transformation of the existing system from unequal to equal, from multiple to direct, from open to secret ballot; b) the accurate formulation of the socio-economic basis that recorded the actual changes. A Constitutional Commission was set up to effectuate all this. This resolution, in fact, ended the last phase in the history of the Federal Constitution of 1924, and gave way to another rather different model, to a novel idea of constitution.

What lessons are to be drawn from this development? They may be summed up, on the whole, as follows:

(a) The model of 1924, just as the model of 1918, was based on the *supremacy of the representative Soviet organs*. This is evident not only

from the doctrinal declaration encountered among the basic principles of the constitutions adopted after 1924 ("all power . . . belongs to the Soviets of the Workers', Peasants' and Red Soldiers' Deputies"). The exclusive rights of the various elected representative organs, the system of responsibility laid down in the constitutions, and the manner of creating state organs support this interpretation.

(b) A rather sharp dividing line in these constitutional models was drawn between the central and local Soviet organs. The constitutions of that time contained, practically without exception, the formulation that the supreme authority was vested in the Soviet congress of Soviets of the corresponding Republic, and its substitute organs, while the local Soviet organs were the supreme organs of power in their own territory "within the compass of their jurisdiction". These formulations suggest that the idea of *central sovereignty* (the fullness of sovereignty) had permeated these constitutions.

(c) The idea of "rationalization" had grown stronger both in the central and local Soviet organs. In spite of the fact that at that time more and more resolutions were issued for "the activization of the Soviets", the actual prospects for the functioning of the broadest collective organs gradually declined as their regular sessions were convened less and less often. The delegated organs—the Central Executive Committee, its Presidium, the executive committees and, in a few Republics, their presidiums—kept expanding their field of operation. The constitutional model provided the possibility of shaping a practically universal delegatory authority not only at one, but also at two grades, while the membership of organs that actually operated grew progressively smaller.

(d) In a few years specialized administration had grown larger. (It must be noted here that the rise in the ratio of People's Commissariats which acted only in the centre, in the federal organization, was especially characteristic of the period between 1924 and 1936; and this undoubtedly proves the tendencies towards centralization).

(e) The *division of labour* became more and more marked in the course of years.

The executive function of the state administration was virtually separated, as early as in 1924, from the legislative-executive Soviet organization which was till then uniform. The first steps toward the separation of the administration of justice were also taken in the Federal Constitution of 1924. On the other hand, more than a decade had to pass before the courts could be "set on their own feet" and, for example, a judicial supervisory organ could be created within the Supreme Court. The constitutional regulation of the procurator's office was still slower, although Lenin requested it as early as in 1922, and even a party resolution had been passed to this effect.

(f) Finally, it is interesting to mention that many an institution created in the course of the state-organizational experiments *withered away* in the course of years. The earlier forms of the direct exercise of power ceased, e.g., such as the general meetings of the constituents in small villages which acted instead of the deputies' Soviets. This shows as well that the preliminary concepts about the models, the search for a "complete" and closed system, often produced forms which lacked roots and could not be used unreservedly in the specific economic and political stage of society. Direct democratic institutions are unable to function efficiently at a given degree of centralization; a central state machinery trusts only the efficiency of its "own" apparatus, i.e. its firmly established organs. This is one of the reasons—so to say—a reason of political psychology, why in a new state a shift takes place in the state organization gradually from the loose revolutionary constitution model towards perfectionism. There are, at this time, many opportunities for local experiments of building the state, and for the intervention of groups of real interests of the population. This means an endeavour to establish centrally all branches of the state model and to regulate them in the constitution or, as far as possible, in statutory provisions of the highest level. This, however, in a given historical phase of the development of a socialist state, has the consequence, that local initiatives concerning organizational issues become practically impossible. This tendency at the same time, does not apply to the entire life-time of the socialist state. Following the defeat of the hostile classes, after the consolidation of the socialist economy, and the strengthening of the international positions of the socialist states, there is no need for centralization, and the widespread application of coercive methods. A period comes, therefore, during which the local needs in the construction of the state become prominent, and the state model may become relatively looser as a result.

We may state, anyway, that the period between 1924 and 1936 was characterized by the improvement of the state organization. This process had both objective and subjective reasons. Socialist industrialization and the satisfaction of military needs must be pointed out as objective reasons which strengthen centralization by their very nature. Another objective factor leading to centralization was the crushing of the czarist and bourgeois power organization that resulted in the cessation of all central power in the early days of the revolution. It is obvious that the firm control of such Republics as Kaluga and Kazan—mentioned also by Lenin—(viz. the supervision of the altogether arbitrary interpretation of the law in their territories), and the control of so many thousand similar, smaller or larger areas headed by nationalistic leaders, and inclined to federation, required increased centralization. Among the subjective reasons we may mention the attitude of pan-Russian power mentality (we know from

Lenin that this was shared not only by Russians), the ideas of extreme centralization adopted by certain leaders, like Stalin, and—beyond doubt—the activity of the bureaucracy that survived czarism and could think only in terms of centralization.

Thus the tendency can be observed clearly. It was especially the state organization, regarded as necessary since 1927–1929, that could no longer be placed in the framework of the constitutional model of 1924. This is why amendments to the constitution followed each other more and more frequently on the federal level, and—as I have shown—a number of such state-organizational forms developed below the constitutional level which actually broke open the framework of the constitution. It is typical that the most profound amendment to the constitution (in February 1935) was decided upon by the same 7th All-Union Congress of Soviets which accepted a plan for the fundamental amendment of the federal constitution. Hardly two years later an altogether new constitutional model was drawn up on the basis of these amendments, and not only in relation to the structure of state organs, but also as regards the internal proportions, as well as key points of the entire state organization.

#### **6. The Organizational Model of the Constitution of 1936**

The Federal Constitution of 1936 effected, beyond doubt, much greater changes in the constitutional system than, for example, the constitution of 1924 and the constitutions immediately following it. The entire structure of the Constitution was revised; the constitutions, which till then were of an organizational nature almost without exception, were replaced by constitutions in which the articles dealing with the basic rights and duties of the citizens played a considerable role. Differentiation and the division of labour continued to develop in the constitution which were aimed at the further democratization of the system of suffrage.

It may be of interest to recall a contemporary remark of historic importance on the main characteristics of the new constitution, which was then adopted a few weeks before. In a resolution passed by the plenary session of February 23–March 5, 1937, of the Central Committee of the RCP (B), the new decisions were summed up as follows: lifting the restrictions of suffrage, making it universal; the elimination of the inequality of rights between town- and village-dwellers in elections, the introduction of equal suffrage; the abolishment of indirect elections, and the creation of an electoral system on the basis of which all Soviet representative organs are elected by the citizens directly. It was a new feature in the resolution that while earlier the delegates were elected by

open ballot and the voters accepted or rejected a list of candidates as a whole, hereafter ballot was secret and votes were cast for individual candidates. The resolution states: "These modifications of the electoral system will have the result that the masses can control the Soviet organs increasingly and that the responsibility of the Soviet organs towards the masses will grow."<sup>2 3</sup>

This evaluation apparently approached the new constitution only from the angle of the democratization of the electoral system. But even the reform of this system had a direct effect on the model of state organization. Thus, the direct election changed the relations of subordination in the old model; the former personal influence of the lower Soviet organs ended with the abolition of indirect elections. In addition to the aforesaid changes innumerable fundamental modifications resulted from the framing of the new constitution.

With its 146 articles, the Federal Constitution of 1936 was the up to that date *longest* Soviet constitution. It is interesting to note that this length resulted not from the enumeration of the basic civil rights and duties (they were dealt with in 16 articles), but rather from a *most detailed* description of the organizational scheme of the federation, of the union, and the Autonomous Republics as well as from the fact that, contrary to the former federal constitutions (including the Transcaucasian one), it now also provided an outline of the local Soviet organization. From that time on, socialist constitutions also contained the model of local organs, the judiciary and the procuracy; and, what is more, not only the model of Supreme Court and office of the Procurator-General, but also the full national structure of these organizations.

Nevertheless, we may say that the Constitution of 1936 did not become one of a casuistic nature; it remained, for the most part, a skeleton law, and this quality of the law was even accentuated to a certain extent. This is especially clearly seen in the definition of areas of jurisdiction where the Constitution in many important cases left the regulation of powers to lower level legislation. The highly important Article 14, regulating the central powers, laid down a common jurisdiction for the *highest organs of state authority* and administrative agencies of the Soviet Union. Thus no distinction was made as to what types of authority belonged to every single one of these organs. Article 31 tried to mitigate this uncertainty about jurisdictional powers by declaring that they are exercised by the Supreme Soviet of the Soviet Union, provided that they are not assigned, pursuant to the Constitution, to the jurisdiction of organs which owe responsibility to the Supreme Soviet: i.e. to the jurisdiction of

<sup>2 3</sup> Resolutions of the Congresses, Conferences and Central Committee Plenums of the CPSU, Part III, (In Hungarian), Budapest, 1954, p. 339.

the Presidium of the Supreme Soviet, the Council of the People's Commissars of the Soviet Union, or the People's Commissariats. Constitutional practice, however, created a situation—especially in respect of enacting norms—in which this lack of precision produced an increasing number of spheres of jurisdiction which “automatically” required decisions by the Presidium, or, in most cases, by the Council of People's Commissars, or by the People's Commissariats (viz. in circumstances where some organ of lower level addressed them with a specific question).

The skeleton-law character of the Constitution promoted the development of a novel constitutional practice within this scheme or on occasion outside its framework. This Constitution was, for example, the first among the socialist fundamental laws to proclaim the legislative monopoly of the supreme organ of state power and representation—in this case that of the Supreme Soviet of the Soviet Union—which meant that the legislative power of the Soviet Union was exercised exclusively by this organ. This principle, however, was almost entirely formal, since the issues that could be regulated only by ways of legislation, were not defined either by the constitution or by any other statute. So, the Constitution did not preclude any important issue from being regulated by other legal provisions. The legislative monopoly was thus directly not violated, since it was till then actually and only the Supreme Soviet that issued laws. Yet the Constitution failed to realize the original intention of Article 32, namely that the most important acts of State be discussed before the publicity of the supreme organ of state power and representation. It is true that the Constitution was formally not violated, but “constitutional practice” neglected one of the important ideals of the Constitution because of the mentioned inadequate regulation, and so referred the law-making of the topmost level to the Presidium of the Supreme Soviet. This was promoted also by the rule that the regular sessions of the Supreme Soviet had to be held rather rarely, i.e. only twice a year. (Even these rather rare sessions were more frequent than the sessions of the Soviet Congress of the Soviet Union, held once every two years according to the 1927 amendment of the Constitution.) Anyway, this is a typical consequence of skeleton-regulation.

What are the novel features in the state-organizational model outlined by the Constitution of 1936? They may be summed up as follows:

(a) This Constitution, as opposed to the former ones, completely separated the various branches of the state organization from one another, both the central and the local ones. Whereas, following the October Socialist Revolution, the constitutional model was based on the principle of the total and monolithic unity of the state organization, a common origin—viz., the fact that their existence can, in the last analysis, be traced back to some representative Soviet organ—was indicated but rather briefly

by the constitutional rules in 1936. The only earlier indication was that the organizations of the judiciary and the procuracy were treated together in Chapter IX. But this is a seeming correlation which had no objective basis whatsoever, because it was precisely between these two organizations that all organizational connections ceased to exist. These two organizations are probably treated together in the same chapter, because of the traditional structure of the Constitution. However, the text of the Constitution made a clear distinction between these two organizations; the courts, which were defined by Article 102 of the Constitution as the organizations of the administration of justice and the procurator's office, which was defined by Article 113 as the organ supervising the strict implementation of the law. The separation made between the so-called organs of state authority and state administration, is especially significant. While, for example, the Constitution of 1924, and a few subsequent constitutions, made hardly any distinction between these two organizational forms within the central apparatus, and made no distinction at all within the local Soviet organizations—they identified the Congress of Soviets and the Central Executive Committee as the supreme organs of state authority, its presidium as the supreme legislative, executive and directive organ; the Council of People's Commissars as the executive administrative organ of the Central Executive Committee; the constitutions described the executive committees in the local Soviet organization between sessions of the Congresses of Soviets as the organs of supreme local power—the organs of state power and state administration were now sharply separated both in the central and local organization. Pursuant to the Constitution, the organs of state power were as follows: the Supreme Soviet of the Soviet Union and its Presidium; the Supreme Soviet and its Presidium in the Union Republics; the Supreme Soviet and its Presidium in the Autonomous Republics; the Soviet of the workers' deputies in the units of state-territory—*krais*, territories, autonomous territories, *okrugs*, *raions*, towns and villages; the central organs of state administration in the Union Republics and in the Autonomous Republics were the Councils of the People's Commissars and the People's Commissariats (the Constitution contained no reference to the People's Commissariats of the Autonomous Republics); and in the various units of state-territory, the executive committees of the Soviets (the Constitution contained no reference to their specialized administrative organs). Under the terms of this division, the organs of state authority did not perform any administrative functions, while, at the same time, the organs of state administration had no right to substitute themselves for the organs of state authority.

(b) The central model of state organization became simpler. Namely, the former threefold, or even fourfold gradation (Congress—Central Executive Committee—its Presidium—even the Council of People's Commissars in

certain cases) was replaced by a simple twofold gradation in the supreme organization of state power, in the Federation and in the Republics alike. According to the Constitution, the very large congregation of the Supreme Soviet could be substituted for only by its Presidium. The tripartite structure (deputies' Soviets and Congresses of Soviets—Executive Committee—its Presidium) created by the various constitutions disappeared from the local Soviet organization as well, and the Constitution established only one organ of state authority, and one of state administration. A uniform organization was created also in the field of the administration of justice: people's assessors took part in the work of all courts; the judges of all courts were elected: the Supreme Court of the Soviet Union, the Supreme Courts of the Union Republics and the Autonomous Republics were elected by the corresponding Supreme Soviets; the courts of the *krais* and *oblasts* (Autonomous Territories) and of the *okrugs* were elected by the Soviets of the workers' deputies of the given state-territorial unit; the people's tribunals active in the *raions* were elected by the citizens on the basis of universal, direct and equal suffrage. (The only difference here is the term of mandate: 3 years for the people's tribunals, and 5 years for other courts). This general feature, the simplification of the organization, means its unification at the same time.

(c) Despite a thorough division of labour and functions, the Constitution upheld the principle of the *supremacy of representative organs*, and especially the principle proclaiming the sovereignty of the Soviet Union and enshrining the primacy of the Supreme Soviet; but this was not done in the way in which it was conceived in 1918, that is in the context of the general rights of the Soviets, and through the absolute union of the legislative and executive functions. On the contrary, some Soviet organs—central and local organs of state-authority and representation—were given the right to create, directly or indirectly, the organs of administration, administration of justice and the procurator's office. Article 56 of the Constitution declared that the Supreme Soviet of the Soviet Union elects—in a joint session of both chambers—the government of the Soviet Union, i.e. the Council of People's Commissars. Article 63 contained similar provisions on the rights of the Supreme Soviets of the Union Republics as regards the election of the Council of the People's Commissars, while Article 93 contains similar provisions concerning the Autonomous Republics. Pursuant to Article 65, the Council of the People's Commissars was responsible and had to render account to the Supreme Soviet, and to its Presidium in the period between sessions of the Supreme Soviet. (A similar provision was included in Article 80 in respect of the Union Republic.) Pursuant to Article 49, the Presidium of the Supreme Soviet may annul the orders and resolutions of the Council of People's Commissars if they are contrary to the law. Concerning the local



Soviet organs, the Constitution declared (Articles 99 and 100) that the executive, i.e. administrative organ, the executive committee and, in smaller settlements, the chairman, his deputy and the secretary are to be elected by the Soviets. Article 101 emphasized that these executive organs were accountable directly to the Soviets electing them. The Supreme Court and the special courts of the Soviet Union; the supreme Soviets of the Union Republics and Autonomous Republics elected the supreme courts of the given republics; and the Soviets competent for the given territory elected the courts of the *krais*, *oblasts* (Autonomous Areas) and *okrugs* (Articles 105–108 of the Constitution). The Procurator of the Soviet Union (the Procurator-General as he became known later) is appointed by the Supreme Soviet of the Soviet Union for a term of 7 years. The above-mentioned organs which were directly elected or appointed effected further elections or appointments for which they were responsible to the electing or appointing organ. (The executive committees appoint the heads of the special administrative organs, albeit not on the basis of the articles of the Constitution; the Procurator-General appointed the procurators of the Republics, *krais*, *oblasts*, Autonomous Republics and territories for a term of 5 years; the procurators of the Republics appoint the procurators of the *okrugs*, *raions* and towns, and these appointments were approved by the Procurator-General.) Consequently, this organizational solution permits a specialized division of labour (we might as well say, an improved organizational division of labour as compared to past practice, and a much more “rigid” separation of organizational branches than before) and at the same time, it declares the primacy of representative organs, thereby making it possible to subordinate the organs heading various branches to the elected representative organs.

*Real subordination* of course, does not depend on the mere proclamation of the principle of primacy. The political strength and vigour of the representative organs plays also a considerable role. Real power, or its essential points may be shifted as a result of various objective and subjective factors. The state-organizational model set down in a constitution can never be as concrete—i.e. not skeleton-like—as to provide more than a possibility for a constitutional method of the elaboration of important elements. Anyway, several factors must be taken into account: it is the *constitutional duty* of the respective organs to issue orders—pertaining principally to matters of jurisdiction—which aim at the assertion of primacy. It is a further constitutional duty of all organs to observe not only the provisions concerned expressly with the assignment of powers (not to transgress these clauses), but also not to violate such basic principles as are related thereto, e.g. in the case of the Constitution of 1936, Article 2 regarding the political basis or Article 3 on the powers of

the Soviets. That is the requirement of principles of the Constitution, which do not contain rules applicable to the spheres of authority but are absolutely clear as to their orientation and purpose within the model of the state organization. We may say that the foundations of the Constitutional model are the basic principles related to the state organization, in socialist constitutions first of all, to the political basis. Thus, it is not enough that the organs applying and implementing statutory provisions must not disregard these basic principles. They must examine the norms concerning authority in the light of these principles, they must shape their own standards, their further rules related to their authority based on these. These fundamental principles define the way of their actions. Or, to put it more precisely, even if we do not recognize superior or inferior rules in the Constitution, we must admit that since the regulation of competences is inevitably and generally skeleton-like in the Constitution and leaves room for, or even requires, regulation at a lower level, the articles of the Constitution, related to the state organization, e.g. those determining the political basis, usually tell us more about the model than the concrete constitutional norms on the separation of powers. It means that the basic principles express an obligatory form of action even if the norms concerning authority are scanty and not detailed enough. This way, the constitutional principles necessarily express, on the one hand, a fuller commitment and, on the other, they offer a more homogeneous image of the outlines of the model. Hence, the basic constitutional principles inevitably fall within the range of our considerations.

(d) One important step in the transformation of the model was the widespread effectuation of *specialization*. It was evident, among others from the fact that the framers of the Constitution made efforts to develop forms of separation rather than to fuse state-organizational branches of different functions. I have mentioned above that care was taken in the framing of the Constitution to place the supreme organs of state authority and state administration in separate articles. (The expression "organ of state authority"—*organ gosudarstvennoi vlasti*—has been quite original and novel as a definition. The expression "organ of power" used earlier could be applied to any organ exercising authority. The expression "organ of state authority" applied only to specific carefully circumscribed organs: to the representative Soviet organs, i.e. to the Supreme Soviets, the organs substituting them, to the presidiums, and to the Soviets of the Workers' Deputies. This expression served the purpose of distinguishing the representative organs from the executive administrative apparatus.) Although the specialization and independence of the state-administrative apparatus developed considerably during the preceding two decades, the Constitution of 1936 established them more firmly on the highest juridical level.

Other organizational signs of specialization can be recognized, too, in the domain of state structure: the changes in the constitutional status of the courts are characteristic in this respect. The decree on the Courts of November 1923 actually subordinated the judicial organization to the presidiums of the central executive committees; the Federal Constitution of 1924 subordinated the Supreme Court of the Soviet Union to the Central Executive Committee. The Constitution—due, among others, to this subordination—did not call for the independence of the judiciary. Thus, at that time, the judicial organization was still regarded as a non-independent part of the homogeneous state organization governed by the general rules of subordination. The Constitution of 1936 introduced a model that was different from this pattern. The essence of this was that—apart from the election of judges—it abolished all kinds of organizational (subordinate) relations with organs of a different type and any subordination whatsoever, particularly to “outside” organs. Supervision over the judicial activities of the courts was made the right and duty of the Supreme Court of the Soviet Union, just as the establishment of special courts had to be decided by the same organ. The separation of the judiciary was proclaimed and guaranteed by Article 112 of the Constitution as follows: “Judges are independent and subject only to law.” The affirmation of the independence of the judiciary was at the same time one of the safeguards of the organizational separation of the courts.

A similar development is manifest with respect to the organization of procurators. The resolution of May 1922 on procuratorial supervision declared that the function of the procurator of the republic (the RSFSR) was to be performed by the People’s Commissar of Justice, which meant that he became head of the procurator’s office. The Constitution of 1924 expressly states that the procurator of the Supreme Court and his deputy are to be appointed by the Central Executive Committee and they act within the framework of the organization of the Supreme Court. This situation was completely changed by the Constitution of 1936. The procuracy was no longer subordinated to any state-administrative (judicial administrative) or judicial organ. It has already been mentioned that the only sign of the former connection with the judiciary was that these two organizations were dealt with by the Constitution in the same Chapter. The procuracy was subordinated to an “external” organ in only one respect: the Procurator-General was elected by the Supreme Soviet of the Soviet Union, and was accountable to it as consequence thereof. In other respects, the entire organization represented a strictly centralized structure, i.e. all procurators and staff members worked—in the final analysis—in subordination to the Procurator-General; their appointment, or confirmation (approval) in their posts, also originated from the Procurator-General. Article 117 of the Constitution clearly separated the procurators’

organization from local influences and from all other subordination to state organs: "The organs of the Procurator's Office perform their functions independently of any local organs whatsoever, being subordinate solely to the Procurator of the USSR." This meant that, as a consequence of the procurators' strict subordination, they enjoyed freedom from control also in respect to various non-local organs. Although the Supreme Soviet provided general guidance for the Procurator-General by the provisions of law, this followed only from the universal principle of being subject to law; on the other hand, the Supreme Soviet influenced the procurators' organization also by criticizing its activities. This criticism, however, did not concern single organs of the procurators' organization, but the organization as a whole, through the Procurator-General. The Constitution thus allowed the specialization and the organizational separation of the procurator's office.

(e) A similar organizational change resulted from the abolition of the indirect electoral system. While in the past, i.e. before 1936 even the central power took its origin from the Soviets of the lowest degree, owing to the fact that the Soviet organization was built from below—the organ expressing sovereignty was actually the Soviet of the workers', soldiers' and peasants' deputies, sovereignty being the summation of the power of these Soviets—the personification of the people's full sovereignty changed now even in principle. The embodiment of the workers' full power was now the Supreme Soviet of the Soviet Union, the supreme organ of state authority and representation elected by the whole adult population having franchise. It was *here* that the workers' will was directly concentrated, for this was the only organ elected and empowered by the population of the entire country. Any other Soviet only represented the people of a given territorial unit of the state, and these units—as a result of direct election—did not unite anywhere into local sovereignty and did not transform it into the sovereignty of the whole of the people. The Constitution shifted the state organization from the former Soviet basis of "local sovereignty"; it was no longer the local Soviets of deputies, which formed the foundations and components of sovereignty, but rather the supreme organ of state authority and representation, created by the entire population of the federative state. Apart from the Supreme Soviet, and the Supreme Soviets of the Republics, other Soviets had by now become but local organs, and were no longer media for building up the supreme will from the lowest level. They were local organs whose powers were confined to given territories; they were connected downwards and upwards only by the ties of official hierarchy.

All this had the consequence, among others, that the organs of state authority and representation of various levels became much more sharply separated from one another than in the case of the earlier constitutional

models. While, in the past, the re-election of the deputies' Soviets could entail a change in the composition of the higher Soviet organs, and that of the congresses of Soviet—and, consequently, a change in their attitudes—the Soviet organs now lived *their own life* on all levels within the compass of statutory provisions. Thus, the system of direct election had more or less the same result as quite a number of the constitution's provisions pertaining to relations among the various branches of the state organization, i.e. it furthered the separation of the organs from one another, and increased the delimitation of the responsibilities—or, at least, the theoretical possibility of this. If, therefore, I were to try to give a brief definition of the fundamental changes in the model that resulted from the Soviet Constitution of 1936, I would say that this Constitution was characterized by the delimitation of the various types of organs by the demarcation of the powers of national organs from those of local organs, and by growing specialization while maintaining the supremacy of the organs of state authority and representation.

Having made this comprehensive characterization, let me try to outline the state-organizational model provided by the Constitution. There is no question that, owing to the specialized separation of organs, the model of this constitution is the easiest to describe. (Difficulties tend to arise from the fact that below the constitutional level regulations of certain powers had not taken place. This is the core of problems in practically all socialist state organizations.)

As has been mentioned, according to the principles of the Constitution, the key position of the state organization was held by the Soviet organs. The most important of these organs—in this model—were the Supreme Soviets and their presidiums acting in the federation and in the Union Republics. As a result of the federal structure, the Supreme Soviet of the Soviet Union was made up of two chambers of equal rank: the Soviet of the Union and the Soviet of Nationalities. Both chambers were elected by the constituents directly, only the proportions in the election were different. (In the case of the Soviet of the Union the proportions were the same for all territories, i.e. there was one deputy per 300 000 inhabitants; in the case of the Soviet of Nationalities, the number of the deputies to be sent to this chamber corresponds to the legal status of the federal entity.) Both chambers had officials of their own. The Supreme Soviet held regular sessions twice a year; if there was a divergence of opinions, or some other important question was to be discussed, the two chambers of the Supreme Soviet, elected their Presidium in a joint session. The Presidium, which originally consisted of the chairman, of 11 deputy chairmen—according to the number of the Union Republics—one secretary and 24 members, was changed in its composition later on (the number of deputy chairmen grew commensurately with the number

of the Union Republics, while the number of members decreased). The Presidium had limited delegating powers compared to the Supreme Soviet, and its sphere of authority was defined by Article 49 of the Constitution rather extensively.

The Supreme Soviets of the Union Republics were unicameral; they, too, elected their own presidiums whose powers were defined by the constitution of the given republic. (The Supreme Soviets on all levels were elected by the constituents for a term of 4 years.)

The supreme organ of state administration in the Federation and in the Republics was the Council of People's Commissars (from March 15, 1946 the Council of Ministers); its members in the federation were, originally, the chairman, his deputies, the chairman of the State Planning Commission, the chairman of the Soviet Control Commission, the people's commissars, the chairman of the Committee for Collecting Agricultural Produce, the chairman of the Committee on Arts, and the chairman of the committee of Higher Education (the composition of this organ has changed very often since then: in 1965, it comprised the heads of some 15 state-federal committees, almost 50 ministers and the chairmen of the council of ministers of the 15 Union Republics, in addition to the chairman of the council of ministers, his several first deputies and many deputies). The powers of the Council of the People's Commissars were not defined by the Constitution either in respect to the Federation or to the Union Republics. The sphere of duties of the Council of the People's Commissars of the Soviet Union was indicated by Article 68 in a rather sketchy way: co-ordinating and directing activity; the implementation of the national economic plan and budget; safeguarding public order, state interests, and the rights of citizens; conducting foreign policy; determining the annual contingent of draftees for military service and setting the pattern for building up the armed forces; instituting special committees and directorates.

Subordinated to the Council of People's Commissars the following organs were set up: the all-union People's Commissariats (called "united" before 1936) and union-republican People's Commissariats, as well as the state committees and directorates subordinated to the Council of People's Commissars; in addition in the Union Republics, the union-republican People's Commissariats (i.e. subordinated to the People's Commissariat acting under the same name among the federal People's Commissars), and the republican People's Commissariats (for which no equivalent was created among the federal People's Commissariats), as well as committees, and so on.

The central organization of the Autonomous Republics was laid down partly by the federal, partly by the Union Republic constitutions. Here also, the supreme organs of state power were the Supreme Soviets and

their presidiums. The councils of the People's Commissars, and, subordinated to them, the People's Commissariats and other central organs were formed also in the Autonomous Republics.

*In all territorial units* the local organs of state authority were the Soviets of the workers' deputies. Pursuant to Article 94 of the constitution, they were also the organs of state power in the *krais*, *oblasts*, autonomous regions, *okrugs*, *raions*, towns and villages. Article 97 defined the tasks of the Soviets as follows: the direction of the activities of the administrative organs subordinated to them; the protection of state order; the observance of the laws; the protection of the rights of the citizens; the direction of the local economic and cultural activities; the drawing up of the local budget. It is obvious that this enumeration laid down the framework for the activity of the local Soviets only (as a matter of fact not too strictly). More than that was not stated even in the constitutions of the Union Republics. According to Article 99 of the Constitution of the Soviet Union, the executive administrative organs of the Soviets were the executive committees; viz., in smaller settlements, where no executive committee was elected, this function was assigned to the chairman, his deputy, and the secretary. The constitutions of the Union Republics also enumerated in detail the specialized administrative organs which were set up by the executive committees. It is important to note at this point that, as regards the organs of the local Soviets, the constitutions of the Federation and the Republics emphasized the duality of local and central branch-direction. The local Soviets were elected by the citizens every other year on all levels; they held their regular sessions in towns and villages monthly, and on higher levels less often (six times a year in the *raions*, four times a year in the *krais* and *oblasts*).

According to the Constitution of 1936, the organs of the administration of justice are the following: the Supreme Court of the Soviet Union; the Supreme Courts of the Union Republics; the courts of the *krais* and *oblasts*; the courts of the Autonomous Republics and Autonomous Regions; the courts of the *okrugs*; the special courts of the Soviet Union; and the people's courts. Apart from exceptional cases, people's assessors participated in the work of the courts. The Supreme Court of the Soviet Union exercised supervision over the judicial activity of all organs of the administration of justice. The courts were elected bodies: their members were elected for a term of 5 years by the Soviet organ of state authority and representation of the corresponding level, except for the people's courts whose members were elected by the constituents for a term of 3 years. The judges functioned independently in their judicial activities and were subject only to the law.

At the peak of the centralized procuratorial organization stood the Procurator-General of the Soviet Union, who was elected for a term of

seven years by the Supreme Soviet of the Soviet Union. All other subordinate procurators in the republics, *krais*, *oblasts*, Autonomous Republics and Autonomous Regions were appointed by the Procurator-General for a term of 5 years. The procurators of the *okrugs*, *raions* and towns were appointed by the procurator of the Union Republic for a term of 5 years, with the approval of the Procurator-General of the Soviet Union. No dual subordination whatsoever applied to this organization; its hierarchic structure and operation were strictly centralized.

The 1936 Constitution of the Soviet Union did not draw up a complete scheme of state organization either. For example, the Constitution frequently said nothing about the various organs playing an important role in the activities of the state; or it appeared only from the enumeration of the members of the Council of the People's Commissars (the Council of Ministers since 1946) what important administrative organs were operating that had not been included in the list of the central administrative organs in the Constitution. The image conveyed of the administration of justice is incomplete too. Typically, the Constitution did not mention the organs (courts) of arbitration, although their role in the administration of justice was at least as important as that of the regular courts. Finally, the Constitution failed to mention what social organizations have taken part in the implementation of the tasks of the state in recent years (e.g. social-collegial courts).

The significance of the Constitution of 1936 reached beyond the borders of the Soviet Union as far as the model of state organization is concerned. Although many new constitutions were drawn up in recent years, we cannot say that this effect has ended. It is typical, for example, that the former state-organizational model has survived in its most important features in the new Constitution of the Rumanian Socialist Republic. That is why I had to deal with this model more in detail, and had to show that it resulted in extremely far-reaching changes as compared to the earlier constitutional models.

## **7. The Model of the Constitution of 1977**

Our statement that the structure of the 1936 Constitution was changed compared with the earlier ones, i.e. its organizational character was decreased, applies to an even greater extent to the Soviet Constitution of 1977.

In the present Constitution, which, consisting of 174 Articles, is longer than the former one, the number of Articles dealing with organizational questions was decreased by more than 10 per cent, while the number of those dealing with non-organizational problems was nearly doubled. (As



concerns the length of Articles the increase is even greater in the latter category of regulations.) Especially much has been simplified in the constitutional description of the multiple-stage (all-union, union and autonomous republic) supreme organization. Thus, for example, in the Constitution of 1936 we find 15 Articles on the Council of People's Commissars, whereas the Constitution of 1977 contains only 9.

By this, however, regulation was by no means finished. On the very same day when the Constitution was adopted (October 7, 1977), an Act was issued on the enforcement of the Constitution of the Soviet Union. This authorized the Supreme Soviet to prepare detailed rules for the enforcement of the Constitution. The related resolution issued at the end of 1977 contained a detailed plan about the organs which shall submit the draft bills and about the deadline for submittal. Numbering 21, the draft bills concerned such important issues as suffrage, the Council of Ministers, people's control, state arbitration, the draft bill on certain territorial Soviets, as well as the draft on the rule of procedure of the Supreme Soviet. In July 1978 the Supreme Soviet of the Soviet Union accepted the drafts on the Council of Ministers and on suffrage, the latter one being a comparatively short Act containing 32 Articles. Thus, a double-level solution emerged for the shaping of the constitutional model.

The organizational model deviates only to a small extent from the model of 1936; changes can rather be noticed in the more exact definition of the spheres of power.

In the future, too, the decisive factors of state organization are the principle of people's sovereignty (Article 12) and the principle of democratic centralism (Article 3). According to Paragraph 2/ of Article 2, "the people exercise the state authority through Soviets of People's Deputies, which constitute the political foundation of the USSR" and all other state organs are under the control of these Soviets and have to render account to them. Thus, the Constitution develops further the traditional organization of Soviets. From among these organs, the highest standing one is the Supreme Soviet of the Soviet Union which is a bicameral organ of people's representation, consisting of a Soviet of the Union and a Soviet of the Nationalities. Its exclusive spheres of authority are enumerated by Paragraph 3/, Article 108 of the Constitution. The Soviet of the Union is elected on the basis of proportional suffrage by the constituents of constituencies, whereas in the Soviet of the Nationalities 32 representatives are delegated from each Union Republic, 11 from each Autonomous Republic, 5 from each Autonomous Region, and 1 from each Autonomous District. The Supreme Soviet of the Soviet Union elects, from among its members, the Presidium which partly fulfils the functions of the Supreme Soviet in the period between its sessions—except its exclusive spheres of authority—and partly acts according to Article 121

of the Constitution in its own spheres of authority, as well as in those on the basis of which it issues law decrees. However, these law decrees have to be submitted to the next session of the Supreme Soviet for approval.

Elected by the supreme organ of state authority, the Council of Ministers is the supreme executive and directive (administrative) organ of state power. Its members are: the chairman of the Council of Ministers, his first deputies, his deputies, the ministers (the leaders of 32 all-union ministries and 30 union-republic ministries, i.e. altogether 62 ministries), the chairmen of the state committees of the Soviet Union (altogether 18 leaders of 6 all-union and 12 union-republic committees), the head of the State Bank and that of the Organization of Statistical Management, as well as the leaders of several committees and organs, who are elected to be members of the government by the Supreme Soviet at the proposal of the chairman of the Council of Ministers. The chairmen of the Councils of Ministers of the Union Republics are *ex officio* members of the Council of Ministers of the Soviet Union. Thus, the Council of Ministers of the Soviet Union is rather great; it has more than 100 members. Between the sessions of the Council of Ministers, which are held at least four times a year, the Presidium of the Council of Ministers—including the chairman, his first deputies and deputies—decides independently in questions related to the management of the national economy and state administration.

The People's Control Committee of the Soviet Union is set up by the Supreme Soviet of the Soviet Union.

The structure of the supreme state power and state administration organizations in the Union and Autonomous Republics is similar to that of the All-Union Republic: at the peak we find the Supreme Soviet and its Presidium, then there are its central organs, viz. the Council of Ministers, the ministries and the state committees.

The most important units of local administration are the local Soviets of the people's representatives (in the *krais*, territories, autonomous territories, districts, towns, town districts, large villages and rural settlements). The executive committees are the executive and directive organs of the local Soviets. (The Constitution does not mention the specialized administrative organs of the Soviets.) The Constitution discusses the organs of the administration of justice and those of arbitration as well as the procurators' control in a separate chapter (Chapter VII). According to Article 151, justice is administered exclusively by the courts, whereas debates among enterprises, institutions and organizations are decided by the organs of state arbitration. Procuracy is the organ of supervising legality. Among the organs of the administration of justice we find the lawyers' co-operatives which are organizations giving legal assistance.

Among the organs of the administration of justice, the Constitution enumerates the Supreme Court of the Soviet Union (which is elected on

the joint session of the two chambers of the Supreme Soviet), the Supreme Courts of the Union Republics, the Supreme Courts of the Autonomous Republics, the courts in the *krais*, the territories, the autonomous regions, the towns and the autonomous areas, the people's courts in the districts and towns, and the military courts. The judges of the higher courts are elected by the Soviets of the respective level, whereas those of the people's courts are elected by the constituents of the districts and town. The Procurator-General of the Soviet Union is appointed by the Supreme Soviet, the procurators of the Union Republics and the Autonomous Republics, of the *krais*, regions and Autonomous Regions are appointed by the Procurator-General, whereas the prosecutors of lower levels are appointed by those of the Union Republics. Appointments are valid for five years.

Thus, we can say that, on the constitutional level, the state organizational model does not differ very much from that of the Constitution of 1936. However, I have to mention that the model was extensively supplemented both from the aspect of organization (by including in the Constitution, organs which had not been present in the former one, e.g. state arbitration, the right of workers' collectives in lawsuits, etc.) and from that of the sphere of authority by defining the exclusive spheres of power and especially by giving a detailed description of the spheres of power of the central organs.<sup>24</sup>

As I have already mentioned, we can expect the completion of the Constitution of 1977 of the Soviet Union from a series of Acts on its enforcement. Many questions, which are discussed in the Constitution only in general terms, are expected to be regulated in detail through these Acts. Acts are being planned concerning people's control, state arbitration, the Supreme Court, the Prosecution, lawyers' collectives, plebiscite, workers' collectives, the commissions given by the constituents as well as other important fields.

<sup>24</sup>It is interesting to note that also the majority of the articles published in the West, considers this settlement of competences as the most characteristic feature of the new constitution in the organizational part. Cf. Fincke, M.: Die Verfassung der UdSSR vom 7. Oktober 1977—in: *Jahrbuch für Ostrecht*, Band XVIII, 1977, pp. 225–227.

## THE EVOLUTION OF THE MODELS OF PRESENT-DAY SOCIALIST STATES

### 1. Constant and Changing Features in the Socialist Constitutions

We seem to have arrived to the present, to the problems of constitution-making in our days, through a discussion of a number of antecedents, yet it is by no means accidental that I have given a detailed analysis of the evolution of the constitutional state-organizational model of the first socialist state. I have already referred to the impact of the bourgeois-liberal "model constitution"—the Belgian Constitution of 1831—on the European continent in the second half of the 19th and the first decade of the 20th centuries. The similar liberal economic experimentation in the states creating new constitutions made it practically natural to regard this Constitution as their ideal. These countries searched for the constitutional solutions of a socially more developed state and hoped that these solutions would act as levers for their own social development. It is strange enough that this world of ideas was comprehensible to almost everybody even in the second golden age of European nationalism. This role of the Belgian Constitution was, almost undoubtedly, suppressed not by some trend of ideas, but rather by the final defeat of the idea of liberal economy in Europe, or, more exactly, by the liquidation of the remnants of liberal economic life on the European continent.<sup>25</sup>

The development of the socialist constitutions in the Soviet Union, the evolution of the new state-organizational models, was the result of long experimentation and disputes, as may be already seen from what has been hitherto explained. The revolutionary movement devoted great attention to these experiments in the 20s and 30s, and regarded their results partly as its own. It saw, beyond doubt, in these novel solutions of state organization the state institutions of a more developed society, the prototype of the socialist state of the future. The consequence of this was that the framing of the Soviet constitution was regarded as the model in

<sup>25</sup> The "stability" of liberalism is mentioned by B. Mirkine-Guetzévitch in the foreword of his collection, *Les constitutions de l'Europe nouvelle* (Paris, 1938, [p. 31]), where he explains that as a result of the majority system the Belgian constitution of 1831 and the regime of Louis Philippe had a much greater influence on continental Europe than England.

almost every new socialist country, the accomplishments of Soviet state construction as the natural way of building a socialist state.

This created a situation in which the actually valid Soviet constitution became everywhere the constitutional pattern for building the socialist state. (The Mongolian Constitution of November 26, 1924, the Declaration on the Rights of the Working People of Mongolia, was conceived according to the pattern of the early Soviet declarations, just as the Mongolian Constitution of 1940 was based on the Soviet constitution of 1936, and adopted the structure of the latter.) Up to 1945, there was no other "experimental field" available for the construction of a socialist state organization than the Soviet Union. This was the reason why, in the period between 1945 and 1949 when the transition to the socialist system of society took place also in other European countries, the Soviet constitutional model again became the natural pattern for framing constitutions. The identity or great resemblance in the structure of the constitutions resulted from the adoption of the actual model of the Soviet state structure. Moreover one can see that in Asia, where social conditions greatly differed from those of the Soviet Union (it should be added that, as a result of revolutionary struggles, certain experience on building the state was gained in Asia, too, e.g. in China, as a consequence of revolutionary power, organized over large territories, or in Vietnam in the organization established during the Japanese occupation and after it, in the free territories etc.), the Soviet constitutional model was also effective, at least temporarily. Only one can be mentioned among the socialist countries whose state organization was originally, not shaped on the basis of Soviet experience: Cuba. This Constitution, however, was drawn up in a different period of constitution making, because the first constitution was adopted in 1959. The second constitution, that of 1976, was already affected by other socialist constitutions.

The fact that, following World War II, the state-organizational model laid down in the Soviet Constitution of 1936 became dominant in the socialist countries had several reasons: (a) the Soviet model was, among others, the result of *international socialist experience*; (b) the Soviet model was, beyond doubt, a state-organizational scheme corresponding to *socialist production relations*, and represented, therefore, the political requirements of a higher order of society; (c) it was in the Soviet Union that the conditions and forms of a modern socialist state could be worked out for the first time.

Owing to the expansion of the socialist world, one of these three reasons is still effective, namely, that the shaping of socialist production relations and the corresponding social structures inevitably produce common, and, in a certain sense, constant features of socialist constitu-

tion-making in this part of the world. We must now examine in the light of historical experience what these constant, and, we might say, common features are; and, on the other hand, which factors make it not only possible, but necessary, to produce several types of models instead of the earlier "monolithic" unity.

The *transition to socialist production relations* is a basically uniform factor in socialist states. The alteration of the class structure, and of the class basis of the state power, is a natural consequence of this. Since the abolition of capitalist production relations and power relations cleared the way for the working class and other working strata towards seizing power, it is no longer possible for the power monopoly of the exploiting minority to survive on the national or local level. The democracy of the working people is realized in a number of ways in the state-building activities of these countries.

Ever since the first socialist experiment, since the Paris Commune, it had been a constant and common feature of the socialist state models that only such socialist state organs could be created which were based on the power relations resulting from the socialization of the productive forces. The socialist state organs represent the great majority of the population or they operate according to the will of the representative organs. Putting it in a simpler way, we express this requirement by stating that, ever since the first attempt at building a socialist state, all socialist constitutional-organizational models have been based on the *principle of the people's sovereignty*. These constitutions contain this principle explicitly, partly by declaring that the given state is the state of workers and peasants, the state of workers and working peasants or that of the working population of towns and villages, or that of the working people or the people.<sup>26</sup> This principle, however, requires further explanation especially from the point of view of what organizational guaranties are available for the realization of the people's sovereignty; and it is on this level that we find the most important common and constant elements in the state-organizational models of the European and Asian socialist constitutions. Article 2 of the Soviet Union's Constitution of 1936 declared that the Soviets of the Working People's Deputies form the political basis of the Soviet Union, and Article 3 terms these organs the embodiment of the working population of towns and villages holding all power, and the echo of these statements is heard in all socialist constitutions. As a matter of fact, most present-day socialist constitutions assign the exercise of the power of the working population to representative organs of various names which are organized

<sup>26</sup>Cf. Article 1 of the 1977 Constitution of the Soviet Union, Paragraph /2/ of Article 1 of the Polish Constitution, Article 1 of the Chinese Constitution, Article 1 of the Rumanian Constitution, Article 71 of the Yugoslav Constitution, Paragraph /1/ of Article 4 of the Vietnamese Constitution, Article 3 of the Mongolian constitution, Paragraph /1/ of Article 2 of the Hungarian constitution.

similarly to the Soviets. The Czechoslovak Constitution of 1968, or the North-Korean Constitution of 1972, declare that the working population exercise their power through representative organs (these are, in the first case, the Federal Assembly, the Czech National Council, the Slovak National Council, and the national committees; in the second case, they are the Supreme People's Assembly, and the people's assemblies active on various levels). Even in the Yugoslav Constitution, which differs the most from other socialist constitutions, the Skupshtina, the elected organ representing the social and political community, is of very great importance.

The creation of an organizational model, similar to the Soviets, in all socialist states indicates the historic importance and universal validity of this organization in several respects. Concerning the state-organizational model, it might be summed up as follows: (a) the Soviets emerged, and developed as the first and full (sovereign)-right authority organs of the *working and exploited population*; (b) the Soviets have been, from the very beginning, the organs suitable for becoming popular representative and power organs, which—owing to the *identity of their structure*—were able to comprise both local, territorial and central power; (c) the Soviets are the organs which correspond to the various forms of exercising power, which combine the advantages of representative system with the *responsibility for the executive work*; (d) the subordination of the state organization to the people, “real” control of this organization by the people, is made possible by the links between the Soviets and their administrative organs. The Soviet model—or, what is essentially the same, the similar structure of the representative organs in the socialist countries born after World War II—is novel and uniform in that the organs owned and controlled by the working class, have a decisive role in its creation and development. The party of the working class, its trade unions, the various groups of industrial workers, the popular-front type united organs of the working class and its allied social strata, have a decisive influence on the formation of representative organs. The several attempts made in the last decade for the implementation of the direct representation of the strata led by the working class indicate that the need for this influence exists also nowadays, even though many a decade had already passed. (We should take into account here the representation of the basic organizations of the so-called “associated work” in Yugoslavia, or the Polish provisional measures on factory constituencies, etc.) The Soviet model is thus, not simply an organizational model, but is, at the same time, a model of power basis for the working class even in a period when the hostile classes cease to exist in the socialist state, but the attainment of socialist aims still depends first of all on the position and influence of the working class. The

Soviet organization can realize all this without any particular manipulation: the targets of the society and the State are clearly manifest in it, and so is the class content of the social institutions which are represented in it.

What I must now add to this picture is that this universality of the Soviet model became necessary because it was actually the *first* organization which was able to express, and to fulfil, the demands of the working strata, and which, at the same time, could become a state and social organ. The historic importance of the Soviet model is due to the fact that it exemplifies the way of a comprehensive change in the power. It is only natural that the organs of state authority assume the character of a Soviet not by their name but by their class content, political-social aims, organizational safeguards, and powers.

Another factor of the constant elements is connected with the previous question: there is a recurring demand in the socialist constitutions for perpetuating and consolidating the direct relationship between the state authority and the citizens of the given state. This feature of the constitutional model is often summed up by the somewhat simplified term "direct democracy". However, the state-organizational model of the socialist constitutions never made a distinction between the representative and the so-called direct forms of socialist democracy. It strived for this all the less because historical experience showed that the bourgeoisie usually made efforts to play off these two forms of exercising power against each other, in order to weaken democratic tendencies. (The representative organs held under necessary influence were presented as "modern" as opposed to the "primitive" and obsolete popular meetings; on the other hand, the plebiscites almost overtly manipulated were many times used against parliamentarism for the sake of legitimating Bonapartism.)

It is characteristic of the socialist constitutional model that, on the one hand, it tries to find the forms of directly connecting the population with legislation (plebiscite, referendum, consultative popular debates); it tries to find other forms of the population's influence on the representative institutions, in addition to real representation, i.e. the limited mandate (public commissions, general reports, fixed forms of connection between delegates and constituents); it tries to find forms of cooperation between activists and decision-making official organs. On the other hand, it places the state administration under the influence of the masses through self-governing organs and temporary solutions.

The various forms of contacts between the State and its citizens all showed their ebbs and flows, and one or another of them always kept appearing with varying efficiency in the history of socialist constitutions. The recent constitutions refer, without exception, to the various methods of direct influencing. Article 2, Paragraph /4/ of the Czechoslovak Constitution of 1960 declared that "representative bodies and other state



organs shall rely on the creative initiative and direct participation of the working population and their organizations"; a more distinct, and at the same time more definite formulation can be found in Article 89 of the Yugoslav Constitution of 1974: "Working people shall exercise authority over and management of social affairs through decision-making at assemblies; through referenda and other forms of personal expression of views in basic organizations of associated labour and local communities, self-managing communities of interest, and other self-managing organizations and communities; through delegates in managing bodies of these organizations and communities; through self-management agreements and social compacts; through delegations and delegates to the assemblies of the socio-political communities; and by guiding and supervising the work of bodies responsible to the assemblies." The Constitution of 1974 of the German Democratic Republic enumerates among the basic rights of the citizens: their right to participate in decision-making, in the shaping of the political, economic, social and cultural life, and this finds expression, according to Paragraph /2/ of Article 21, in the democratic election of all power organs; in their activity of planning, guiding and shaping social life; in the reports on the work of organs of popular representation, of the delegates, of the heads of state and economic organs; in the expression of their will and demands through the authority of their social organizations; in the possibility to present their suggestions and opinion to social, state and economic organs and institutions; and, finally, in their right to plebiscite, which means that, in the latter case, the Constitution expresses the requirements not in the collective right of the sovereign people, but approaches the same sphere of problems through the rights of the individual citizen. The Hungarian Constitution amended in 1972 provides in the new text of Paragraph /5/ of Article 2 that "at their place of work and domicile, the citizens take part in the administration of public affairs also directly".

Although there is a wide variety in the forms of the direct contacts between the state power and the citizens, the constancy of this trend can be established with complete certainty in the socialist constitutions: it is aimed at disclosing novel and suitable forms, and at maintaining at the same time the old, well-proved contacts with the masses, modes of self-government, in order to accomplish a generally defined objective. This objective consists in the employment of the active forces of the sovereign people for controlling and supporting the state apparatus against bureaucratic forms and the danger of alienation.

Finally, a third constant element can be discovered in the constitutional models of state organization. This is, in fact, connected with the questions of the Soviet model we have mentioned; but its significance deserves some emphasis. When I mentioned the links between the Soviets

and the administrative and directive units, I actually pointed to their *hierarchical* relationship. The state administration, even the judicature and supervision by the procurators, just as the production units, servicing, cultural, social and other agencies and institutes of the State, are in a certain way subordinated to the representative organs. The fact that the supreme federal administrative, judicial and procuratorial organization is elected, viz., appointed in the Soviet Union by the supreme organ of state authority and representation, i.e. by the Supreme Soviet, was declared by Articles 56, 105 and 114 of the Constitution of 1936 and is declared by Articles 129, 153 and 165 of the Constitution of 1977. Obligation to report was also imposed on the organs thus created. The position of the local Soviets in respect to specified administrative and judicial organs was similar. Among the new socialist constitutions, the Mongolian one declares (in Article 38) that the Council of Ministers is responsible to the Great National Hural; Articles 66 and 73 declare that the Supreme Court and the Procurator-General are responsible and obliged to report, to the same organ. According to Article 59, the executive committees of the local hurals are responsible to the representative organs instituting them. Paragraph /3/ of Article 2 of the Czechoslovak Constitution of 1960 declares that "the authority of other state organs" shall be derived from representative bodies of the working people. Article 132 of the Yugoslav federal constitution declares that "the assembly is a social, self-managing body and the supreme organ of power within the framework of the rights and duties of its socio-political community." The prosecutors' organization is subordinated in the last analysis to the Federal Skupshtina (the Federal Public Prosecutor is appointed and discharged by this organ pursuant to Article 372 of the Constitution). The judges of regular courts and other persons participating in judicature are elected and relieved of office by the skupshtinas of the corresponding social and political communities (Article 230). Pursuant to the 1974 Constitution of the German Democratic Republic, "the basis of the system of state organs is formed by popular representations" (Paragraph /2/ of Article 5); according to Article 50, all leading state organs, the president and members of the Council of State, the president and members of the Council of Ministers, the president of the National Defence Council, the president and members of the Supreme Court, and the Procurator-General are elected by the People's Chamber, and may be recalled by it. The Constitution emphasizes the subordination of the Council of Ministers to the acts of the People's Chamber (Article 78, Paragraph /2/) and the responsibility of the Supreme Court and the Procurator-General to the People's Chamber (Article 93, Paragraph /3/, and Article 98, Paragraph /4/).

Thus the aforesaid hierarchical order determines the place of the representative organs in the generally known model of socialist constitu-

tions by assigning them, at least, *key positions*. The present general scheme does not give unrestricted power to the popular representative organs—in the sense as was declared by the 2nd All-Russian Congress of the Soviets on November 8, 1917—all the less so since such a homogeneous, upwards-from-below structure of the unity of representative organs as was self-evident in the case of Soviets in 1917 and 1918 is no longer known in recent socialist constitutions. While the sovereignty of the supreme representative bodies has not been questioned so far by the constitution of any European or Asian socialist country, and these organs were placed to the peak of the state hierarchy, the local representative organs were not excluded—especially not by the Soviet Constitution of 1936, nor by the constitutions of the republics that followed it—from that relationship of super- and subordination which is generally characteristic of the interrelations of national and local organs in the entire state organization.

The so-called *supremacy* of the representative organs can be interpreted as a general constitutional principle only with *some restriction*. Concerning the supreme representative organ, the constitutions have observed this principle, formally at least, and there is no such organ which is given constitutional authorization to stand higher in the hierarchy. No external organ has the absolute right of supervision over the representative organ. (The problems connected with constitution courts will be treated in detail in Chapter 11.) The case is, however, altogether different with the local and territorial representative organs which exercise their supreme local and territorial powers—conferred on them by the law and the act of election—only within the limits of their respective jurisdiction. Apart from this, however, the prevalent authority of the national organs (not only of representative organs, but also of the administrative organs of the central apparatus, and the procurators' offices) must be regarded as a general trend. It is a universal basic principle of these constitutions, that the normative acts of the central administrative organs issued within their powers are binding for the local representative bodies. The valid Czechoslovak Constitution even goes beyond this: Article 136 declares that the governments of the Republic "shall direct and control the work of the national committees". Several socialist constitutions have authorized the organizations of the procurators, supervising legality, to control all local organs in this respect, including the local representative organs, and to lodge protest on legal grounds against their acts violating the law (e.g. Article 133 of the Bulgarian Constitution; Article 104 of the Czechoslovak Constitution of 1960; Article 105 of the Vietnamese Constitution; Article 43 of the Chinese Constitution of 1978).

Hence, it must be stated that the supremacy of the representative organs is not universal; the aforesaid new structure of the system of representa-

tive organs, created by the Soviet-Russian Constitution of 1918 and the abolition of the indirect electoral system in 1936, actually divided this system into two parts which can be clearly distinguished: One part was the supreme representative organ (the socialist parliament) as the supreme organ of state authority exercising virtually absolute power, the other part was the organs of "local power"; the local representative organs. According to the general model, the local organs may have smaller or greater powers of self-government, but this is a derivative power since its limits are set by statutes enacted by central organs (representative, administrative, etc. organs) on the basis of powers reserved for them. (The Yugoslav legislative and normative practice differs from this system only partly, since here the sphere of authority regulated by the legislative body sets the limits to the legislative activities of communities.) Thus the local representative organs are in fact at top of the hierarchy locally—provided that a special state organization of the Soviet type has developed on the given level (but their hierarchical position is not clear-cut in respect of the so-called *deconcentrated* organization). Even this necessarily restricted supremacy of the representative organs is virtual, as far as the principles of local powers are not defined on the constitutional level, and these powers themselves are not defined by any statutory provisions.

All this, however, must be discussed more in detail later on; at this point it was necessary to explain this structure only because, on the one hand, it has developed into a general and constant organizational model in the past decades; and because, on the other hand, it undoubtedly differs from the earlier Soviet conception, and this fact affects decisively the constitutional model of state organization.

The constant and more or less general elements are to be found—as appears from what we have said—on the *most fundamental level* of the constitutional model of state organization. One might as well say that, beyond all centrifugal tendencies and partial solutions, these are the structural phenomena that provide the uniform view on the state-organizational parts of the European socialist constitutions. They are based for the most part directly on the generally recognized theses of the Marxist—Leninist theory of the state, and reflect many fundamentals of the socialist theory which existed even before Marx.

The *special forms of state organization*, found in various socialist constitutions, show a much more varied picture. If we have concluded that their most important general features are found mainly in the basic principles of the constitutional state model, we now may say that the special features can be found in other layers, and that these come up in connection with non-fundamental questions. (It should be mentioned at this point that in framing the Yugoslav Constitution, two basic differences can be seen, compared to the constitutional structure of the other

European socialist states: (a) the state organization is built up on the basis of communities, this fact revealing a considerably different interpretation of sovereignty; (b) the constitutional structure reflects that the intention was to create a fundamental law of society rather than a constitution of state organization,<sup>27</sup> and this circumstance entailed an increased and fundamental emphasis laid on social self-administration.)

The non-general features in the socialist state-organizational models of our days may be of various origin. Actually the differences in state organization may be traced back to three sources:

(a) The differences in the degree of socio-economic development in the various countries inevitably influence certain details of the state organization. It is typical, for example, that Article 94 of the Vietnamese Constitution of 1960 declared that the local popular forces of self-defence were to be organized by the people's councils and administrative committees of the autonomous territories (of nationalities) on the basis of their autonomous rights; this means that, in this case, the units of the armed forces, which could not be controlled centrally, were subordinated to the local representative and administrative organs. The 1974 Constitution of the German Democratic Republic contains—in accordance with the advanced industrial production relations—a special regulation within the state-organizational model on the rights of the trade unions. Pursuant to Paragraph /1/ of Article 45, the trade unions have the right to conclude agreements with state organs, with the leaders of industrial units, etc. in order to improve the working and living conditions of the workers. Paragraph /2/ of the same Article goes even beyond this: according to this, the trade unions take an active part in the socialist legislation by their right to initiate laws, and by exercising social control over the observance of civil rights ensured by statutes. Paragraph /3/ of Article 4 of the amended Hungarian Constitution makes special mention—although briefly—of the trade unions in a similar manner.

(b) The other reason for the existence of the special forms of state organization can be recognized in the different national characteristics and traditions. In this respect we must devote particular attention to the different characteristics which originate from the inevitably arising federative solution of the nationality problem. Ever since its existence, the Soviet State has produced typical solutions of state organization for mounting this difficulty. These are the bicameral system, the corresponding collective form in state leadership, and, in recent years, also the enlargement of the Council of Ministers by including the chairmen of the councils of ministers of the Union Republics. Among others, for a better

<sup>27</sup> Djordjević, J.: *Conception générale et structure de la nouvelle constitution yougoslave de 1963*, Paris, 1966, p. 71.

solution of the nationality problem, for a better protection of the rights of the republics and provinces, the Yugoslav federal constitution has set up the Council of Republics and Provinces as one of the chambers of the Federal Skupshtina. Some of the special state-organizational solutions are based on traditions and customs. The institution of the president of the republic was so much traditional in Czechoslovakia that it was maintained even after the socialist transformation of the state; the Constitution of 1968 did not break with this tradition; it entrusted the president with responsibilities which, in other socialist countries, were usually entrusted to collective presidencies, or presidiums. The tradition of the Yugoslav presidential institution emerged under the conditions of socialism; but, as concerns its form, it is going to change as provided by the Constitution, in view of the fact that only the president of today is exempt from the prohibition of re-election.

It is certainly useful to take into account some national features and traditions in respect of special state-organizational models; the introduction of socialist institutions is this way more easily understood by the masses who are accustomed to earlier solutions, if only because of their participation in certain sectors of state life, or their familiarity with these. The inclusion of formerly known institutions in the new model usually has the consequence that the strata which were formerly politically active get some idea about how to understand the function of the new socialist organizations. It is clear, however, that the traditional organs reflecting national characteristics can only be complementary institutions of the state organization which has new, socialist objectives, and differs therefore from the old ones in its social basis. Traditional forms can only become natural parts of the constitutional model if they operate similarly to the model as regards their personal composition, their aims, and even certain methods of activity.

The appearance of the policy towards nationalities within the scope of the socialist federation or autonomy in the socialist state is another question. It may become inevitable in such cases that, owing to the different socio-economic conditions of the different minorities, types of state institutions must be accepted which differ from the general organizational forms of the socialist state. I refer here especially to the socialist countries in Asia having a relatively large number of nationalities who live under nomadic, or other more primitive circumstances than the majority of the population. In China, for example, the organization of the Mongolian minority group—even as regards their power and representative organs—was for a long time not formed on the basis of territorial units, but according to their nomadic life, the so-called “flags”.<sup>28</sup> In the case of

<sup>28</sup> Cf. the statement of Liu Shao-Chi in 1954 in the first session of the National Popular Assembly: “. . . the socialist transformation in the regions inhabited by national minorities will be

the Yugoslav federative system, both politicians and political scientists emphasize the possibility of independent solutions exactly because of the different social conditions of the nationalities: especially that the constitutions of the republics need not be necessarily copies of the Federal Constitution,<sup>29</sup> although Article 206 of the said Constitution declares that "republican constitutions and the provincial constitutions may not be contrary to the Constitution of the Socialist Federal Republic of Yugoslavia."

(c) It is one of the characteristics of our age that the *experiments in building the state* are important sources of special state-organizational solutions. The term "experiment" must certainly not be interpreted in its scientific sense, for it is quite natural that the usual scientific series of experiments can hardly be carried out on the level of constitutions. Social sciences—political science, organizational science, sociology, etc.—of the socialist countries were engaged in extensive debates about the practical shaping of the socialist state organs especially during the last fifteen years. One of the results of these debates was that in the socialist countries organizational forms, differing from the earlier state machinery were introduced with the help of changing the constitution in rather dissimilar directions and to different degrees. The fact that there are such considerable differences between the institutions introduced this way—even if the socio-economic development of the countries involved shows no remarkable difference—originates in several sources.

These dissimilarities are technically explained by the circumstance that the aforesaid social-scientific disputes were usually confined to *narrow national limits*, and that the overstressing of these "national characteristics" often prevented a comparison of international experiences, and, especially, making use of them. In my opinion, it is especially exact research work that, by its nature, should not be confined to "national borders", even if an extremely large number of factors, including the psychological ones resulting probably from national prejudices, must be taken into account when doing research work in the field of social sciences. In my opinion the political scientist working with comparative methods must by all means adopt this thesis if his professed ideal is not some narrow national form, but the world-wide progress of socialism, and if he contemplates the world of today together with its realities, its complex economic and political constellations.

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realized gradually, in a relatively long time, with the application of moderate measures" (1st session of the National Popular Assembly of the Chinese People's Republic, September 15–28, 1954. — The Constitution of the Chinese People's Republic, Budapest, 1954, p. 42.) Under the influence of Han nationalism, this well-considered policy was rejected later on.

<sup>29</sup> Djordjević: op. cit. p. 8.

But the origin of such "experiments" is not inevitably, and not always of a negative nature. Moreover, we must regard experimentation itself, the reforms of the state organization, as natural and self-evident in our days in view of the fact that the socialist states are functioning under new circumstances, that the preconditions they face at the every moment of their birth differ from those of the first socialist Soviet state which had been isolated for a long time and was ravaged by a civil war. Otherwise, the constitution of 1936, its state-organizational model, must be regarded as one variant only, which after more than forty years was replaced by a new constitution. On the session of the constitutional committee, Brezhnev referred in his report to the socialist constitutions having been adopted during the seventies, some provisions of which cannot be disregarded.<sup>30</sup>

On the basis of experience, it should be the duty of comparative political science to set up a scientific forum—even if not a specially political one—for studying the new organizational models. Whether a novel organizational form is efficient enough and meets the requirements of the basic principles of the socialist constitutions, should be examined independently in each case. The present centrifugal tendencies could be utilized this way for the common purposes of socialist state-building, i.e. they could be made the common intellectual property of all the socialist countries.

These experiments were started in the socialist countries of Europe and Asia mainly in the 1960s. (In some Asian socialist countries, the models introduced differed from the Constitution of 1936 from the very beginning: let alone mention the fact that the Cuban Constitution of 1959 differed from all former socialist constitutions, especially as concerns the state organization.)

The Czechoslovak Constitution of 1960 (Chapter VIII) discontinued the formerly usual separation of state-authority organization from the administrative one. The national committees are the joint organs of state authority and administration in the territorial units. This had the consequence that no separation of powers was carried out between the national committees and their organs.

Chapter XIII of the Yugoslav Federal Constitution of 1963 instituted a constitutional court; the duty of this court is to examine whether the legislation of the republics is in conformity with the Federal Constitution, and whether or not the federal laws harmonize with the Constitution. While the former constitutional doctrine (and the Yugoslav theory, too) held it impossible that the legislation of the legislative supreme representative body should be revised, Article 245 of the said Yugoslav Constitution

<sup>30</sup>*Pravda*, July 5, 1977.



obliged the Federal Skupshtina to bring the law in accord with the constitution within 6 months from the resolution of the Constitutional Court. If it fails to do so, the unconstitutional law ceases to be valid. A similar, completely new form of solution is to be found in Article 35 of the new Rumanian Constitution. Accordingly: "Those harmed in a right of theirs by an illegal act of a state body can ask competent bodies, in the conditions provided by the law to annul the act and repair the damage." This provision is completed by Paragraph /3/ of Article 96: "The high courts and courts pass judgments on the petitions of persons whose rights have been violated by acts of the state administration, and may, within the limits set by the law, also decide upon the legality of such acts." This constitutional provision has actually cleared the way for a full judicial revision of administrative acts, and this extended the jurisdiction of judicial organs considerably compared to the earlier socialist constitutional models. This way, the earlier proportions in the state organization were shifted. To quote a typical example of the role of the constitutional state-organizational model, we may refer to Paragraph /3/ of Article 5 of the Constitution of the GDR, which provides state-organizational constitutional safeguards by defining the scope of this organization at the same time: "Under no conditions and circumstances shall state and power rights be exercised by organs other than those instituted on a constitutional basis." On the other hand, Chapter 2 of Part III of the Constitution of 1968 grants unusually wide powers—not customary so far in other socialist constitutions—to the Council of State and its president: in essence, the former is entrusted with the basic implementation of laws and resolutions of the People's Chamber, with the guarantee of constitutionality, while the latter is entrusted with a number of important international functions which are collectively exercised in most other socialist states. This structure transferred powers from the Council of Ministers to the Council of State. The text of 1974 decreased the number of spheres of authority possessed by the president of the Council of State, his spheres of authority having been confined to directing the work of the Council of State and conducting diplomatic activities (Articles 69 and 71). By the introduction of the institution of presidency, the 1974 amendment of the Rumanian constitution granted extremely wide powers to the holder of this position.

This brief enumeration proves sufficiently that in the most recent period of constitution-making a great part of the older forms of the constitutional state-organizational model underwent lesser or greater reforms, and this process would seem to enlarge the differences compared with the old organization. The trends and cause of this change ought to be examined separately in the case of every institution and country.

## 2. The "European", "Asian" and "American" Models, or the Difficulties of Classification

The growth of the socialist world since World War II resulted in actions aimed at building a socialist state in a number of countries where highly different socio-economic conditions prevailed, and where the earlier legal and state-building traditions were by no means homogeneous. We can say that the Soviet Union emerged in the old territory of Russian law, yet such a unity was out of question after World War II when the building of socialism was started in a number of countries. Even a superficial glance is enough to see that the new socialist states emerged in territories where in the past a variety of legal systems had their influence. The more the socialist world expanded, the more dissimilar the state-building and legal traditions became the effects of which can by no means be disregarded.

No wonder that—first and foremost bourgeois legal scholars—have tried to ascribe the differences, manifest within the socialist legal systems, to this single causative factor. One of the most distinguished French scholars of comparative law, René David (although he does not study the legal system primarily from the constitutional angle), writing on the socialist family law—whose kinship with the Roman-German family law is pointed out by him—declares: "The legal systems of the European and Asian people's republics must be distinguished from the Soviet legal system. Though these countries belong to the socialist family, major features of belonging to the Roman-German family law can be distinguished in the European ones; as concerns the Asian ones, it is problematic how the new conceptions can be reconciled in practice with the principles of the Far Eastern civilization which prevailed in that society prior to the socialist era."<sup>31</sup> True to this train of thoughts, David discusses the Chinese socialist legal system as one of the Far Eastern systems, together with the Japanese legal system (he includes in this family the Mongolian, the North Korean and the Vietnamese legal systems, saying that these countries have discarded their traditions in order to establish a new system). It is true, however, that socialist China is dealt with only in one-third of the part discussing Chinese law; the rest is devoted to a description of the institutions and principles prior to 1949.<sup>32</sup>

It is even more typical that David, carrying on the classification, divides the legal systems of the European socialist countries into two groups: the first one consists of the countries of so-called Western

<sup>31</sup> David, R.: *Les grands systèmes de droit contemporains*, Paris, 1964, p. 23.

<sup>32</sup> Ibid. pp. 519–530.

traditions—including Hungary, Poland, Czechoslovakia, Croatia and Slovenia where in the past the development of law went parallel with that of the German, Austrian and French law—and the other part includes Albania, Bulgaria, Rumania and Serbia which, similarly to the Russian legal system, were attached not to the West European, but to the Byzantine traditions of law, and where the Turkish legal institutions had an undeniable influence (although he admits the later influence of Western legal systems as well). The problem of the Cuban legal system is also mentioned at another part of this enumeration.<sup>33</sup>

It is difficult not to be aware of the artificial nature of René David's train of thoughts. Even from a historical point of view the uniformization is telling, by which he pours into one bag the countries "east of the Ural", their legal systems, without paying attention to the developments of the last century, and especially those of the last 50 years, disregarding the various manners in which these countries were liberated, the differences in their earlier ideological situation, and the relative independence of their progress.

And, most of all, it is impossible to explain, either in Asia or Europe, the emergence of common, universal or special institutions under socialist circumstances solely by historical or traditional reasons. It has been clear in the Marxist-Leninist theory of state that a new state cannot be the follower, the successor of a former bourgeois or feudal state; the question of crushing the state apparatus must therefore not be approached in an abstract way: this apparatus must be abolished and the major part of its forms, as being unsuitable for the working classes building socialism, must be replaced by organs led by the people, by the working class and their allies. It is typical that these institutions of the common model are laid down constitutionally in all European and Asian socialist countries.

If we wish to see clearly the trends of present-day socialist constitutional models, we must indeed consider historical development, but not in the sense René David did. It is worth considering first of all the epoch when the socialist states of our days took their first steps on the road to socialism. This epoch can be divided into three periods. Apart from the present-day Soviet Union, there was another country, Mongolia, in which the socialist order was stabilized in the early '20s. After the revolutionary forces created a restricted monarchy in 1921, the local power organs, the hural of the people's representatives were set up on the pattern of the Soviets in 1923, where 90 per cent of the deputies were the representatives of the working population. The first Constitution was adopted in 1924, which declared the country a people's republic. It visibly regarded

<sup>33</sup> Ibid. pp. 276-277 and p. 149.

the Soviet Constitution of 1918 and 1924 as its model. It would be difficult not to recognize the Soviet forms in the mechanism of the supreme and local state organs. They were adjusted to local conditions, with special regard to the differing class relations. The second constitution of the Mongolian People's Republic was adopted during World War II, in June 1940. While the Constitution of 1924 regarded the early Soviet constitution-making as its patterns, the Constitution of 1940 shows the influence of the 1936 Soviet Constitution, both as regards the structure and the model of state organization. Provisions resembling the former Constitution still survived in the new one, such as the manifold organization of the supreme state authority, or restricted suffrage. All this was changed between 1945 and 1952 by a number of amendments. These completed the assimilation of the Mongolian Constitution to the Soviet Constitution of 1936. The framing of the Constitution of 1960 went essentially along the same line; we shall return to it later on.

The second period of the framing of the socialist constitutions began after World War II. This period was sharply split into parts depending on the rate at which the political process advanced in the given country. It is characteristic that the first post-war socialist constitutions were framed in countries where the issue of power was hardly contestable because of the strength of the partisan movement. Constitutions were enacted in Yugoslavia and Albania in 1946, and from among the Asian countries, in Vietnam at the same time. The influence of the Soviet Constitution of 1936 was felt intensely in the European socialist Constitutions: in the Albanian, just as in the Bulgarian Constitution of 1947, and in quite a number of early Yugoslav constitutional conceptions.

Since the first Yugoslav Constitution was not entirely detached from the Soviet pattern, the influence of the latter one is evident. The other European people's democracies were characterized during the first post-war years by the fact that, apart from a few minor modifications, they returned to the pre-fascist constitutions, e.g. Czechoslovakia to the Constitution of 1920, Rumania to that of 1923, Bulgaria to the so-called Trnovo Constitution of 1879. The fundamental democratic provisions of the Constitution of 1921 were restored in Poland. In Hungary, the missing constitutional provisions were replaced by Act I of 1946.

The second phase of this period was the adoption of the so-called "minor" Polish Constitution of February 1947. This was, in fact, a constitutional law on the structure and powers of the supreme organs of the Polish Republic. At the same time, the declaration on civil rights and liberties was also issued. The constitutional law was entirely of organizational nature, it maintained the earlier Polish state-organizational system with the wide powers of the President of the Republic and the Council of State in the centre. This was followed by the adoption of the Bulgarian

Constitution at the end of 1947 (it actually started the next period in the framing of constitutions.)

In 1948 the struggle for power was decided in two European socialist countries: in Rumania and in Czechoslovakia. This political victory was followed in both countries by the adoption of new constitutions. The Rumanian Constitution laid down the foundations of the later state structure; at that time, and later on, it was influenced by the model of the Soviet Constitution of 1936. The collective presidential organ subordinated to the organ of supreme authority, the organization of the people's councils, as well as the new organization of procuracy in its rudimentary form, were created at that time. The Czechoslovak Constitution of 1948 also showed the influence of the Soviet Constitution, but it retained certain traditional forms. The institution of the President of the Republic, as well as the national assembly, and the presidium safeguarding constitutionality remained unchanged. The Constitution completed the establishment of the Slovak national organs (the Slovak National Council and the body of delegates) and conferred considerable powers on them. The local authority organization was established in the form of national committees. In accordance with the Soviet model, this Constitution included the institution of the people's assessors, but failed to regulate the new functions of the procurators' offices; the administrative courts were maintained in this constitution. (This Constitution was completed later by so-called acts of constitution which made the original constitution much more like the Soviet model. The administrative organization, the courts and the new-type procurators' organization, the national committees and, later, the Slovak national organs were reshaped between 1948 and 1956; some of them were rendered suitable for performing new functions. The total revision of the Constitution was delayed up to 1960 by a highly detailed, modifying system of acts of constitution. This way of framing a constitution, however, is rather unusual in the practice of the socialist states.)

Two important constitutions were adopted in Asia between 1946 and 1948: the Vietnamese and the North Korean ones. The importance of the Vietnamese Constitution of 1946 did not consist in the establishment of the state organization (the outbreak of war prevented the implementation of such provisions), but in the declaration of the rights of the state resulting from sovereignty. However, based on the Constitution, the National Assembly, its Permanent Committee and the government were operating even in the subsequent years. (This constitution was amended in 1954 and 1956 though its spirit and basic principles remained unchanged.) The North Korean Constitution was adopted in 1948 together with the proclamation of the Democratic People's Republic of Korea. This constitution with minor amendments corresponds in its principal features of

state organization to the model of 1936: it established the Presidium of the Supreme People's Assembly, the council of ministers, the ministries, the local people's assemblies with their executive organs, the people's committees with their specialized administrative organs, the courts with the participation of people's assessors, and the organization of procuracy on supervision of legality.

In 1949 two European socialist countries adopted new constitutions. The Hungarian Constitution—similarly to that of the other people's democracies—was adjusted to the model of 1936. It should be mentioned here that the difference in state organization before and after the adoption of this constitution was perhaps the greatest in Hungary. While in many European countries the constitutional organs carried on—with minor amendments—the activities of the people's organs which had emerged during the period of resistance or immediately after the liberation, in Hungary the national committees, and the self-governing bodies were abolished prior to the establishment of the local councils. The functions of the Parliament were changed considerably, and the institution of the president of the republic, which hardly had any traditions, was abolished.

The other constitution adopted in the same year was that of the German Democratic Republic. Here, two factors must be taken into consideration: (a) the question whether Germany would be united was not yet decided. Consequently, it would not have been expedient to preclude the possibility under the given socio-economic circumstances of creating a constitutional system in the eastern part of Germany which although not consistently socialist, would have been acceptable to other classes and strata on a democratic-antifascist basis. (b) Apart from all this, this constitution was regarded from the outset as temporary, as one which *could be further developed*. The declaration of the principle of the people's sovereignty was used as a means for further development in the socialist direction. Although Article 3 of the Constitution did not go beyond the usual formula "All state power originates from the people", its contents *were* broadened by the right of citizens to take part in the passing of resolutions. The content of this *Mitbestimmungsrecht* was defined by this Article as the people's initiative, plebiscite, the exercise of active and passive franchise, and holding offices in public service and in the administration of justice. And though the Constitution did not aim at giving a fully active role to the population in all the activities of the state, apparently the later development of legislation first of all relied on, and referred to, this Article of the Constitution. This is why the present literature on constitutional law in the GDR says that "through the principle of the people's sovereignty, the

decisive constitutional principles have assumed a dynamic character";<sup>34</sup> this means that the constitutional reality soon went beyond the relatively narrow limits of the Constitution by expanding the state-organizational model through statutory regulations. The original model of the state organization consisted of a supreme representative organ (the People's Chamber), a so-called *Länderkammer* (the Chamber of the *Länder* since the *Länder*, still existed at that time— which represented the *Länder* but was not of the same rank as the People's Chamber, the Government, the President of the Republic, the Supreme Court and other courts including lay judges, the self-governing bodies, as well as the representative bodies of communities and districts. (This state organization, especially the local organization of state power, was changed considerably in subsequent years. The institution of the President of the Republic was replaced by the collective form of the presidency: the Council of State. The most important acts of constitution were framed in 1957, 1958, 1961, 1963 and 1965.)

The profound changes in the Albanian Constitution in 1950 may be regarded as the closing part of the second period. Among these changes we find the declaration that the people's councils form the political basis of the State. The definition of the socio-political role of the Workers' Party and that of the Democratic Front was included in the text of the Constitution. The number of the members in the people's assembly and in the presidium was increased.

1952 must be regarded as the year in which the first novel ideas appeared in the framing of European socialist constitutions. In Poland the "minor" Constitution of 1947 was replaced by a single uniform constitution, and in Rumania the earlier Constitution of 1948 was replaced by a new one. Concerning the Polish Constitution, it had been stated earlier that it was the most concise and shortest European socialist constitution<sup>35</sup>—consisting of 91 Articles in all—and was therefore not of a casuistical nature, but was a skeleton constitution. Although its structure and its part dealing with the state organization did not differ from the essence of the 1936 model, amendments were often unnecessary: it was enough to pass resolutions on the changing of constitutional practice, and thus a further extension of democratization was already possible. During our investigations we must take into consideration not only the fact that the Polish Constitution of 1952 took over the state-organization scheme

<sup>34</sup>Schöneburg, K. H.: "Verfassung und Gesellschaft (Die Verfassung der DDR von 1949. Ihr Wesen und ihr Wirken)" *Staat und Recht XVII* (1968), No. 2, p. 186.

<sup>35</sup>Burda, A.: "Konstytucja PRL na tle tendencji rozwojowych konstytucjonalizmu socjalistycznego", (The constitution of the Polish People's Republic within the system of socialist constitutions) *Panstwo i Prawo XXII* (1967), 6, p. 580, footnote, No. 7.

of the Constitution of 1936 (with the Sejm as the supreme organ of state authority, the Council of State having collective presidential powers, the Council of Ministers as the supreme executive and administrative organ, the ministers heading the various branches, the local people's councils and their presidiums, and the courts and the organization of the procurators), but also the circumstance that this special structure of the Constitution was highly suitable for being developed further.

The Rumanian Constitution of 1952 differed from the former one mainly in that it resembled even more the Soviet model. Concerning the organization of procuracy, for example, it fundamentally differed from the Constitution of 1948. This constitution established the Hungarian Autonomous Territory. It is interesting to note that this was the only constitution among the popular-democratic constitutions of Europe which disfranchised the exploiting classes. The state-organizational system of the Constitution of 1952 was amended several times, but the principal conceptions of the Constitution were left unchanged until 1965.

As appears from the foregoing, the trend in framing the constitutions could be regarded as centripetal up to 1952-1953, i.e. the constitutions were gradually brought nearer to the state-organizational model of the Constitution of 1936 as the ideal type. In this respect, there was no difference between the trends of the European socialist constitutions and the Asian ones adopted at that time. So if we study this era, we may certainly not speak of any "special European" and "special Asian" models because the constitutional idea in the socialist world of that time was uniform: only one way of development was recognized in the state organization, and this was the Soviet way.

If we search for the reasons of changes, we must conclude that the emergence of ideological differences between the communist parties, within the socialist world, became at the same time the cause for re-examining whether the full uniformity of earlier constitutional views is correct. Following Stalin's death, and, later, the 20th Congress of the CPSU the view was generally accepted that (a) the national specialities (the degree of socio-economic development) of the given countries must be taken into account not only in the conceptual chapters of the constitutions, but also in the models of state organization; (b) it is worth experimenting in the state mechanism of the given countries in view of the fact that not only one conceivable model exists, i.e. that the state-organizational model of the Constitution of 1936 is not the ultimate word in socialist constitution-framing and of the socialist political theory of constitutional science. In addition to all this, we must take into account the aforesaid tensions and differences in the international workers' movement, as well as the conscious centrifugal tendencies manifest in the socialist countries.



The Yugoslav Constitution of 1953 was historically the first and theoretically the most different one of this type. Prior to that year, important principles—not included in the Constitution of 1946—were put into practice, e.g. the right of the self-management of the producers of goods in 1950, or the new local administrative organization in 1952 (the direct representatives of the producers were included in the local representative organs at that time, and so certain local representative organs were made bicameral). The Constitution of 1953 maintained a few chapters of the Constitution of 1946; but the new constitution showed fundamental changes in its structure, and mainly in its state-model. This constitution was already based on the primacy of the local, mainly of the village organizations, and assigned the most important role to their representative and self-management organs. The rights of the republics were extended while those of the federation were somewhat curbed, and the profound changes carried out in the supreme state organization were for the most part characterized by attempts at decentralization. Both the presidium of the Federal Skupshtina and the council of ministers ceased to exist, and the functions of both were assumed by the federal executive council as the executive-political organ of the Federal Skupshtina. The president of the Republic was made Head of State; following the abolition of the ministries, branch administration was made the responsibility of secretariats of state and secretariats of non-operative nature. In the Federal Skupshtina, the representation of the nationalities was entrusted to the People's Council, the representation of the producers of goods to the Council of Producers. The judicial system was also placed on new foundations by this constitution: economic courts were established in addition to ordinary and military courts, and indictment became the responsibility of the public prosecutor's organization. (Following the enactment of this constitution a number of further steps were taken for implementing the constitutional principles. The communities functioning as new, large economic units, the basic cells of local self-administration and power, were created at that time.)

A new socialist constitutional model emerged in another part of the world after this: it was the Constitution of the Chinese People's Republic, which, however, showed highly dissimilar characteristics. It is typical that at a time when the requirement of decentralization arose in the majority of the European socialist countries, the Chinese Constitution openly contained powerful tendencies of centralization. Liu Shao-Chi, in his report on the Draft the Constitution bill at the 1st session of the national people's assembly, said: "our political system is highly centralized, but this high degree of centralization is based on broad democracy."<sup>36</sup>

<sup>36</sup> Liu-Shao-Chi: *op. cit.* p. 32.

This model of state organization was manifold and rather unusual compared to the constitutions after World War II. At the peak of the state organization a representative organ, the national people's assembly took place. This was established by direct vote, because its delegates were elected by the provinces, autonomous territories, cities directly subordinated to the government, the armed forces, and the Chinese living abroad. (The special nature of East Asian conditions appears clearly from the fact that the problem of the representation of the large number—about 12 million—of Chinese living abroad was raised during the debate of the constitution bill.) But the national people's assembly was convoked very seldom; according to the rules, sessions were held once a year; the permanently active organ of the assembly was its permanent committee. The head of state was the chairman who was elected by the national people's assembly—although, according to the preamble to the draft Constitution, the functions of the head of state had to be practiced by the permanent committee and the chairman together. The Supreme Council of State with advisory capacity worked together with the chairman (it was composed of various leading functionaries, such as the deputy chairman, the chairman of the permanent committee, the president of the Council of State, etc.). On the other hand, the Constitution described the Council of State as the supreme state-administrative organ. The local people's assemblies were the local organs of state authority, and the local people's committees were the executive organs of the former. A novel feature in the judicial organization was the open declaration of the supervisory powers of higher courts over court of lower instance, although the independence of the people's tribunals was also stressed in the constitution.

The Chinese Constitution was followed chronologically by the amendment of the Vietnamese Constitution, which, in fact, was the putting into force of the Constitution. But preparations for a more suitable constitution were started soon, and a pattern differing from the Constitution of 1936 had already been developed by that time.

Four constitutions, interesting in respect of their models of state organization, were adopted in 1959 and 1960 in three distant parts of the world. The first of these was the Cuban Constitution. The most important fact to be considered in the case of the Cuban Constitution is that, at the time of the victory of the Cuban revolution, the revolutionary movement had not yet taken an obviously socialist course. Consequently, the Constitution adopted soon after the seizure of power, on February 7, 1959, reflected general revolutionary-democratic demands in its state organization rather than established, well-considered socialist models. Article 2 of the Constitution, for example, stated the principle of the people's sovereignty in a general form: "Sovereignty rests in the people,

and from the people all public powers emanate"—but the forms of the people's sovereignty were not discussed. Article 118 of the Constitution starts with the separation of powers when speaking of the organs of the State: "The State exercises its functions through the medium of the Legislative, Executive and Judicial Powers, and the agencies recognized in the Fundamental Law, or which in accordance therewith are established by law. The provinces and municipalities, in addition to performing their own functions, shall aid in the accomplishment of the purposes of the State." Pursuant to the Constitutions, the most important organ is the Council of Ministers whose president and members are appointed by the President of the Republic. The Council of Ministers is norm-making; it exercises executive power together with the President of the Republic. The major part of the powers is vested in the Council of Ministers. Even in cases when decision is not within its immediate power, the constitution requires a confirmatory act from the Council of Ministers. The President's right of sanctioning and refusing bills is characteristically regulated. If the President returned a bill to the council of ministers, but the latter adopts it again by a two-thirds majority vote, the bill automatically comes into force. The Council of Ministers has the right—in case of absence, incapacity or death of the President of the Republic—to appoint the President's temporary or permanent successor. At the top of the judicial organization there is a Supreme Court; its members are appointed by the President of the Republic. The judicial organization consists of several layers (revolutionary tribunals were set up in November 1959 for proceeding against counter-revolutionary forces). The local self-governing bodies, provinces and municipalities and their administration are subordinated to the Ministry of the Interior; each province is headed by an appointed commissioner, each municipality by three, who exercise the powers of the earlier organs. So it is clear that the state-organizational model of the Cuban Constitution resembles the Latin America revolutionary experiments—often carried out under military leadership—rather than the socialist forms "usual" in Europe and Asia.

With a difference of half a year, two Asian socialist countries adopted their constitutions in 1960, with dissimilar and different models. The provisions of the Chinese Constitution of 1954 had a great influence on the Vietnamese Constitution. Article 4 of the latter, for example, immediately connected the principle of the people's sovereignty with the principle of democratic centralism, in the same way as was done in Article 2 of the above mentioned Chinese Constitution, stating that: "All power in the Democratic Republic of Vietnam belongs to the people. The people exercise power through the National Assembly and the People's Councils at all levels elected by the people and responsible to the people. The National Assembly, the People's Councils at all levels, and the other

organs of state power practise democratic centralism." Similarly, an almost identical provision on the system of rule is contained in Article 6 of the Vietnamese and in Article 17 and 18 of the Chinese Constitution: "All state organs must rely on the masses of people, constantly maintain close contacts with them, heed their opinions and accept their supervision. All servants of the state must be loyal to people's democratic system, observe the Constitution, the law and strive to serve the people."

The supreme organ of state power, the National People's Congress, elected directly and holding regular sessions twice a year was at the top of the state organization. The permanent elected body of the National People's Congress was its Permanent Committee. The Permanent Committee supervised the governing council, the Supreme People's Court, and the Supreme People's Procurators' Office; in general, it protected constitutionality and legality by setting aside the unconstitutional and unlawful acts of the State Council (it had powers to set aside or change the measures taken by the people's councils if they were deemed wrong). Just as the Chinese Constitution, the Vietnamese also declared that the supreme organ of state power may vest the permanent committee with other powers, over and above its express rights.

The functions of the Head of State were performed by the president of the Democratic Republic of Vietnam. The President and his deputy were elected by the National Assembly. A special political conference assisted the President in the preparation of important political decisions through their preliminary discussion. (This conference resembled the Supreme Council of State instituted by the Chinese Constitution.) The special political conference was composed of important political personalities: of the President of the Republic (he presided over this institution), of the vice-president, of the prime minister, and so on. The opinion of the Special Political Conference was passed on by the President of the Republic for discussion and for passing a resolution to the National Assembly, to its Permanent Committee, to the Council of Ministers or to some other body. The supreme executive-administrative organ was the Council of Ministers which was responsible to the National Assembly, or to its Permanent Committee. The president of the Council of State and the prime minister were appointed by the National Assembly upon the recommendation of the President of the Republic; the deputy prime ministers and other members of the governing Council of Ministers were appointed by the National Assembly upon the recommendation of the president of the assembly. The people's councils are the local organs of state authority—with various terms of office—in the provinces, districts, towns, town centres, villages, settlements and autonomous units. The administrative committees functioning on various levels were the executive-administrative organs of the local people's councils.

The people's courts were the Supreme People's Court, the local people's courts and the military courts. The Supreme People's Court had supervisory powers over the local people's courts, the military courts, and over the judicial activity of the special courts. The rights of supervising legality were exercised by the centralized organization of the people's procurators.

The Mongolian Constitution is the other Asian socialist basic law of the same year which resembles the structure of the Soviet Constitution of 1936. True to the earlier traditions in framing the Mongolian constitutions, this Constitution also reflects the Soviet pattern and its reformist endeavours. Differences are manifest in some instances—the budgetary right and procedure, the regulation of franchise—only inasmuch as the pertinent provisions were ordered in a different logical system. Thus the fundamental regulation of the budgetary right is treated in the chapter entitled “The Fundamental Economic Principles and Functions of the State”, while franchise is dealt with in the chapter “The Fundamental Rights and Liberties of the Citizens and How They Are Ensured”. The consequence of this second regulation is, on the one hand, that the people's sovereignty and its realization by the popular-representative system is discussed in connection with the essence and general principles of state organization (Article 3: “All power in the Mongolian People's Republic is vested in the working people who implement that power, through the state representative bodies the Hural [Assemblies] of People's Deputies”) and that, on the other hand, the methods of rule, the other forms of exercising the people's sovereignty, are evolved on a broader basis among the basic rights, in Article 81: “Citizens of the M.P.R. have the right to participate freely in the administration of the state and society and also in guiding the economic life of the country both directly and through their representative bodies. This right is ensured by granting all citizens the real possibility to play an extensive part in all spheres of the country's political, economic and cultural life, in particular, to participate in elections, referendums, the organisation of various democratic societies, etc.” (When studying these provisions, it must be taken into account that in this period a lively debate was going on in most socialist countries about the problems of the people's state, self-administration, and the withering away of the state as such. The framers of the Mongolian Constitution reacted most sensitively to this debate which mainly impressed its marks on the political science of the Soviet Union.) The state-organizational model of the Mongolian Constitution differs from the model of 1936 only in that it expanded the powers of the popular-representative organs, and defined these powers more clearly than before. Otherwise the organizational pattern was the following: The Great National Hural (the supreme organ of state power); its presidium (a deputizing and collective presidential organ); the council

of ministers (the supreme executive-administrative organ); the ministries and public authorities (the heads of branch organs); the hural of the people's deputies (the organs of state authority); their executive committees (executive-administrative organs); the specialized administrative organs and offices of the latter; the Supreme Court; the courts of *aimaks* and towns; special courts and district people's tribunals; and the organization of the procurators. Apart from minor exceptions, the functions and powers of these organs were regulated by the Constitution in accordance with the conceptions of the Constitution of 1936.

These two Asian socialist constitutions are remarkable as they show two considerably different trends in the building up the political organization. Needless to say, we cannot disregard the differences between the socio-economic development of the two countries; yet these are less significant in this respect if we consider the other facet of the problem. Namely, the difference is at least as great, if not much greater, if we compare the Constitution of the Soviet Union with that of Vietnam. Seemingly, these factors have almost no decisive effect, and this is the case in quite a number of European countries.

The Constitution of the Czechoslovak Socialist Republic—not yet federal at the time—was adopted in 1960. With the above-mentioned principle of the unity of the legislative and executive power, an older principle of the socialist way of building the state was taken into account; it was attempted to realize this principle in the Constitution. The role of the committees of the representative organs was stressed at several points of the organization; by giving them wider powers the aim was to put an end to their earlier passivity. The Constitution therefore defined the committees of the National Assembly—which was the supreme body of state power and the only national legislative body—as working and initiating organs which closely cooperated with the government, presented recommendations, and not only discussed drafts of acts and law decrees, but also supervised their implementation (the latter was an obligation of the National Assembly itself). The presidium of the National Assembly which was composed—among others—of the chairmen of the committees, exercised the majority of the National Assembly's rights between sessions of the assembly, or after the expiration of the election period, on the condition of subsequent approval by the National Assembly. At the same time, the powers of the president of the republic did not go beyond conventional presidential powers. According to the Constitution, the government was the supreme executive organ of state power, and simultaneously directed and supervised the work of the national committees in the joint organization of power and administration.

The national committees were the organs of state authority and administration in the various territorial units. This meant also a complex-

ity of powers. The organs of the national committees were the councils, the special committees, and other organs. The councils were directing and coordinating organs, while the special committees (two-thirds of their members usually consisted of representatives of the national committees, the rest of them were not members of the representative organs) were initiating, controlling and executive organs and had the powers necessary for these tasks. (The authority of specialized administration was thus originally entrusted to these organs of social nature by the structure of the Constitution: the experimentations concerning this model however involved many additional changes.)

The Czechoslovak constitutional model introduced new features also into the administration of justice. In addition to the existing Supreme Court, regional courts, district courts and military courts, territorial and workshop people's courts were incorporated in the judicial system (these latter in order to "further deepen the participation of the working population in judicature"). Otherwise the ordinary courts proceeded in boards made up of professional judges and assessors, even if they proceeded as an appellate court. The Constitution brought no new features to the organization of the procurators.

The part of the Czechoslovak Constitution in connection with the Slovak national organs was not sufficiently elaborated in 1960. The building up of federalism in Czechoslovakia rendered such provisions obsolete.

The Constitution enacted in Yugoslavia in 1963 went beyond the basic principles and solutions of state organization which were characteristic of the constitution adopted there ten years before. Two principles must be mentioned in particular which had an influence on the constitutional model: these are the self-administration of the working population, and community self-administration, as the political basis of the socio-political system. As a consequence of all this, the Yugoslav constitutional model contains the issues of both state and social control; the political model was built up on the communities as its basis.

The characteristic judicial organ of the Yugoslav model—the constitutional court—was established in this constitution. The function of this court is to examine whether other acts and statutes are not in contradiction with the Constitution, or the constitutional pattern of the federation has not been violated by some statute. Constitution courts of the federation, the republics and the provinces operate according to the Constitution, and their rulings may result in invalidating statutes in certain cases.

The primacy of the representative (*skupshchina*-like) organs over the administrative ones has to be emphasized in the Yugoslav constitutional model which differs from that of other socialist countries. As a matter of

fact, some parts of the state-organizational model have been built on this principle.

The fourth constitution of Rumania following the liberation was adopted in 1965. At first sight the state-organizational model seems to have changed very little as compared to the model of 1952. Pursuant to this new constitution, the supreme state organization was composed of the Great National Assembly, of the Council of State having limited powers of delegation, and of the council of ministers. The Great National Assembly has a constitutional committee which has the right to make reports and recommendations in the field of safeguarding constitutionality. (But only the Great National Assembly have become more lively, its sessions are held more frequently.) The local organs of state power are the people's councils. Their administrative organs of general powers are the executive committees. Specialized administrative organs and sections are subordinated to them.

The organs of the judiciary are the Supreme Court of Justice and other courts (with the system of people's assessors). The jurisdiction of the courts was considerably extended by the right to revise the acts of administrative organs violating the law. The organization of the procurators was retained as the traditional organ for supervision of legality.

(Following the adoption of the Constitution, remarkable acts and other statutes were framed and resulted in important changes also from the point of view of the constitutional model. The leadership of the state and the party organization was more closely connected. The Secretary General of the Party was elected president of the Council of State, and the province party secretaries were elected chairmen of the executive committees of the county people's councils everywhere. The control of certain specified branches either in the party apparatus or in the ministerial and administrative apparatus was at the same time abolished. The reason given for this was the elimination of parallel organizations with the same task. The alteration of the territorial division of the State resulted in the restoration of the more traditional county organization—though the territory of these counties was not altogether identical with that of the former counties—and the transformation of the communities into larger units was carried through at the same time. The re-establishment of the national organs and the redistribution of their powers was continued by the amendment of the Constitution in 1974. The most characteristic measure of this structure was the creation of the presidential institution, and the granting of wide presidential powers. The President is the general secretary of the Party, the President of the Council of State, the commander-in-chief of the armed forces, and the President of the Council of Defence at the same time. The President has the right to issue decrees and resolutions.)



A new socialist constitution was adopted in the German Democratic Republic in 1968. The former, highly flexible constitutional framework was replaced by a constitution elaborated more in details even though the number of articles contained in it is smaller than in the former one. It must be kept in mind that meanwhile all constitutional provisions connected with the *Länder* became superfluous, as a consequence of the abolition of the *Länder*. (So nearly 20 articles were left out, but the formulation of the present provisions is more detailed.)

In respect of the state-organizational model it is of great importance that the joining of factories, towns, villages, as well as of the trade unions and socialist agricultural production cooperatives in the life of the society and of the state was discussed separately in Chapter II ("The citizen and the communities in socialist society") of the Constitution.

The new constitution retained the division of the supreme state organization, into: the People's Chamber, Council of State, President of the Council of State, the Council of Ministers. The People's Chamber is a directly elected constituent and legislative body. Between the sessions of the People's Chamber the Council of State discharges the fundamental functions entrusted to it in statutes and other resolutions, and represents the GDR in international legal relations. The President of the Council of State has special presidential powers in international relations and in the setting up of the Council of Ministers. The Council of Ministers has organizational directing coordinating and supervisory powers.

The Constitution mentions three main levels of the local organization: popular representation, its council, and its committees. The judicial apparatus is made up of the Supreme Court, the district courts, the regional courts, the social tribunals, the military high court, and the military courts. The judges, the people's judges and the members of the social tribunals are elected by the bodies of popular representation, or directly, by the citizens. The apparatus, organization and duties of the procurators were defined by the Constitution according to the known model. (This Constitution was amended in several parts in 1974, without, however, altering its structure.)

In recent years, several important legislative acts were passed in the European socialist countries concerning their constitutions. The first of them was the Constitution of 1968 of the Czechoslovak federation; besides shaping the federative structure, it maintained the majority of the provisions of the Constitution of 1960. Bulgaria enacted an entirely new Constitution in 1971, while the Hungarian constitution's amendment of 1972 introduced regulations—new for the most part—based on the framework of the Constitution of 1949. New constitutions were adopted in Yugoslavia, its republics and provinces in 1974. Further new constitutions are the already mentioned amendment of 1974 of the GDR

Constitution, the Polish and Albanian Constitutions of 1976 and the new Constitution of the USSR promulgated in 1977. The main characteristics of this latter constitution were treated in section 7 of the third chapter. Outside Europe, new constitutions were framed in North-Korea in 1972, in China in 1975 and 1978 and in Cuba in 1976. A new constitution was framed in Vietnam after the unification of the country.

The Czechoslovak Federal Constitution of 1968 had the aim to secure the equal rights of the Czech and Slovak national states; so a federative state organization was created (with an adequate regulation of powers); the Federal Assembly (with two chambers, i.e. the People's Chamber elected by the population directly, and the Chamber of the Nations whose representatives were directly elected in the Czech Socialist Republic and in the Slovak Socialist Republic in equal numbers); the president of the republic; the federal government (the functions of the ministers and of the under-secretaries of state are divided in each ministry between the citizens of the Czech and Slovak Republics) and the constitutional court. On the other hand, the state organs of the Czech and of the Slovak Socialist Republics were set up: the national councils as the supreme organs of representation and state power as well as the governments of the republics.

The new Bulgarian constitution, on the whole, maintained the former state organization for the most part (People's Assembly, Council of State, Council of Ministers, people's councils, courts and the procurators organization), only the spheres of power were considerably altered. (According to Paragraph /1/ of Article 4, the following are the aims of developing the state organization: permanent widening of democracy, organizational and functional improvement of the state apparatus, consolidation of the people's control over the state organization.) A new provision of this constitution made the village, district and county people's councils the organs of state authority and self-government (their rights resulting from this quality were mentioned already by the constitution).

The amendment of the Hungarian Constitution in 1972 brought about the rearrangement of the spheres of power without changing the structure of the state organization. The organizational order of: Parliament, Presidential Council, Council of Ministers, local councils, courts, procurators' organization was maintained but the powers of the Parliament and the Council of Ministers were widened while those of the Presidential Council were reduced. Already in the former Councils Act of 1971 the local councils were characterized as organs of popular representation, self-government and state administration. This is not only a difference in names but it shows that the powers and independence of the local and territorial organs have considerably increased and are further developing.

The Yugoslav Constitution (that of the federation, the republics and the provinces) of 1974 is built on the basic organizations of so-called associated work, on self-management, and on the system of delegates (the representative bodies). The Federal *Skupština* (its Federal Council and the Council of the Republics and Provinces), the Presidium of the Socialist Federal Republic of Yugoslavia, the president of the Republic, the Federal Executive Council (as an executive-administrative organ), the federal secretariates managing administrative matters, the Federal Court, the Federal Public Prosecutor's Office, and the Constitutional Court of Yugoslavia form the state organization in the federal Constitution. Socio-political and organizational material of several years was collected by the framers of this constitution.

As I have mentioned, the 1974 amendment of the Constitution of the GDR modified the Constitution of 1968 primarily by reducing the sphere of authority of the State Council and that of its president and increasing that of the Council of Ministers, especially in the fields of economic management and planning.

The 1976 amendment of the Polish Constitution effected great changes in the Constitution of 1952; as a matter of fact, we can speak of a new constitution. As for the model of state organization, it follows the former one, but there are great changes in its internal structure. In the following, we describe the structure of state organization. The supreme organs of state power are the Sejm, on the one hand, which is the organ of legislation and decides on the basic principles of state authority and exercises control over the activities of state organizations; the Council of State, on the other, which is elected by the Sejm and is not a substituting organ thereof and has its not very broad sphere of authority, defined in the Constitution. The chief organization of control (exercising legal, economic and expediency control) is the Supreme Chamber of Control, its president being appointed by the Sejm. The chamber itself is supervised by the Council of Ministers. The supreme organs of state administration are the following: the Council of Ministers, which fulfils approximately the same tasks as usually appear in the socialist states, as well as the ministries. The great changes that occurred already in 1973 in the sphere of authority and organization of the National Councils and the local organs of state authority and state administration were strengthened in the Constitution of 1976, according to which in the great communities, towns, town districts and voivodships the National Councils are the basic self-governing and state authority organs. However, the sphere of authority of the National Councils has been separated from that of the territorial organizations of state administration, i.e. from that of the voivodes, the mayors and the various magistrates, who have an apparatus subordinate to them. The voivodes and the mayors of towns of a voivodship level are

government representatives. The organs of the administration of justice are the Supreme Court and separate courts in the voivodships and districts. The Constitution declares that in cases of infractions decisions are to be made by the collegia of infraction.

The Constitution of Albania, as regards its state organization, essentially followed the model of the Soviet Constitution of 1936. According to Article 66, the People's Assembly is the supreme organ of state authority, the embodiment of people's and state sovereignty and the sole organ of legislation. It elects its Presidium, the Council of Ministers, the Supreme Court, the Procurator-General and his deputies. The Presidium is the main and permanently functioning organ of state power; the Constitution enumerates its more important spheres of authority as well as those which are exercised by the Presidium between the sessions of the People's Assembly. The Presidium directs and controls the activities of people's councils. The Council of Ministers is the main executive and disposing organ. Its Presidium observes and controls the implementation of tasks set by the Council of Ministers. The members of the Presidium are the chairman of the Council of Ministers and his deputy chairmen. Ministries are the central organs of state administration; enterprises, institutes and various organs operate subordinate to them. The people's councils are the territorial organs of state power. Whereas the term of the People's Assembly lasts for four years, that of the people's councils lasts only for three years. The executive committee is the executive and disposing organ of the people's council. This hierarchical and dual subordination is strongly emphasized in the Constitution. People's Courts are the organs of the administration of justice. On the top of the judicial organization we find the Supreme Court. The Prosecution, led by the public prosecutor, sees to the observance of laws. It is a new feature of the Constitution that it devotes a special chapter to defence and the army (earlier the constitution included only one Article on the People's Army). The Constitution declares that the army is led by the Albanian Work Party; it provides for the creation of a Council of Defence, whose chairman, who is at the same time the commander in chief of the army, is the first secretary of the Albanian Work Party.

All the special features on which I was able to give a report here—a rather roughly outlined report, but perhaps showing the differences even so—clearly indicate some factors: (a) There is no *typically territorial* (European, Asian) *division* of the models. Instead of a large, continental division we find smaller groups building up models that resemble one another. The dissimilar nature of the Cuban Constitution decreased considerably after the adoption of the new Constitution in 1976. (b) The differentiation of the models can be attached to a certain *historical* period. (Practically the period following the XXth Congress of the

Communist Party of the Soviet Union.) It may be concluded that the way to this differentiation was cleared by the *political* decisions which abolished the exaggerated centralism of the labour movement. (c) Here again *political* reasons opened the possibility of introducing new models. The novel solutions in the state organization are the result of political and ideological considerations. We find identical or similar solutions in cases where such ideological considerations are nearest to one another. It is obvious, however, that these standpoints affect not only the organization of a given state, but also the economic system, since the political and ideological decisions are from the outset influenced by economic factors to take a definite course.

### **3. The State Organization and the Structural Problems of Present-Day Socialist Constitutions**

The principal source of the state-organizational model is doubtless the constitution providing basic regulations; this is at least what is reflected by a more than fifty years' development of socialist political science. Even if, in some cases, no homogeneous constitution was adopted in a country, the most important act of constitution always comprised an outline of the state organization (e.g. the Polish "minor constitution", the Yugoslav act of Constitution in 1953, etc.). The general structure and contents of a constitution inevitably determine the basic features of the state organization, unless the constitution becomes fictitious to an extent when differences emerge between the constitutional basic principles and the organizational scheme. Up till now there has been no example for that. The effect of the contents is fully understandable and logical; it appears, in most cases, not on the "level" of the model, but on the level of the type of state, of sovereignty.

There are, however, other possible consequences. The stability or variability of the state organization depends on whether the principal institutions of the organization are determined by a statute of adequately high level of legislation, or the organization assumes a transitory character because it is easy to make new regulations. The fact that a constitution presents a sufficiently accurate and detailed regulation of the state model, ensures the highest legal stability. To achieve this, the constitution should not be too skeleton-like, but it should go into details, at least, as far as state organization is concerned. Socialist framers of constitution made several attempts at both forms. "Conciseness" and "accuracy", two opposite principles, which, perhaps, ought not to have been defined like this. Burda, in his study mentioned earlier, sets up two opposing types: the too concise constitution—such as the Hungarian and the Polish

ones—and the detailed constitution an example of which in his opinion is the Yugoslav one containing more than three hundred and fifty articles. Burda emphasizes: “Whenever basic institutions are being regulated, it must be carried out so that the legislator’s intentions as to their morphology and functioning should be stated clearly . . . If the abstractness of constitutional principles becomes general it will have an adverse influence on the determination of the legislator’s actual will and on the application of the constitution.”<sup>37</sup> This statement is rather moderate in view of the fact that the *essential* institutions of state organization are not even mentioned in several constitutions as a consequence of which certain extra-constitutional organs may outgrow the importance of the constitutional ones.

Naturally, the definition of the *entire* state organization may not be raised as a constitutional claim. These details would inflate the constitution to such an extent that it would become a mere framework of the state organization, and this would, in turn, push the political intentions of the constitution into the background. (This is not to mean that I underestimate the constitution as a legal provision. But, owing to its character, any constitution is a political document at the same time.) What is needed is a constitutional model which contains the most important state organs, their clearly defined interrelations, i.e. the principal pattern of the division of their powers as well. Extra-constitutional factors, under which organs not mentioned in the constitution are made prominent, must be avoided.

It has been the dream of every constitution-maker for several centuries to make his constitution, as firm as possible, to avoid both minor and major amendments. This, however, has never been achieved all the less so since the more rigid a constitutional order was, the more fragile it became at the same time. Revolutions or *coups d'état* abolished the “unchangeable” constitutions and the state organization along with them. Some experts say today that there exist constitutions which have survived in their original form for a considerable length of time. However, we must mention the fact that behind the relative stability of the constitution, there emerges a new “constitutional reality” with novel organs and changes of powers, which had not yet been known to the framer of the constitution, i.e. a new model is created. And this process is actually promoted by the interpretation of the constitution: however reluctant the jurist is to interpret the constitution on a basis other than the original will of the constitution-maker, he at last must adapt himself to the dynamism of society and state.

<sup>37</sup> Burda, op. cit. p. 850. Differing from the original Djordjević op. cit. p. 8.

This *dynamism* can be incorporated in a constitution in several ways. Either by maintaining the formal rigidity of the constitution, but practically altering the original will of its framer by interpretation, by means of "powers to be implied"; or by framing the constitution in a highly skeleton-like manner from the outset, since—all things considered—any subsequent, new constitutional will can find room in such a framework: and, finally, by putting up with constitution amendments that may become necessary from time to time—but, needless to say, only to the depth we are compelled to go by the dynamic forces of any, especially that of a socialist society.

A purposeful preparation for amending a constitution from time to time is the principal safeguard of the stability of the constitutional idea; for this is how the relation between the constitution and the state, between the constitution and the society is impressed upon the awareness of the citizens. What creates a constitutional stability: it is the balance of the society's constant and dynamic forces through the understanding of the constant and changing motivations of the constitution. This means that a constitution is firm not for its own sake, but to ensure the legality of society (and, what is equivalent to this to a certain extent: to ensure the democratic order of state hierarchy); and the changes in the constitution must meet the changing demands of society.

In terms of this idea, the constitutional model of the socialist state organization must be stable and dynamical at the same time. It has been tried to establish this equilibrium in several forms in the socialist countries; but we cannot say that a constant formula could be worked out for this purpose.

## THE SUPREMACY OF REPRESENTATIVE ORGANS

## 1. People's Sovereignty and Popular Representation

Ever since the question of state power and sovereignty was raised anywhere in the world, the debates about this set of problems have had two purposes in view: (a) *to legitimate the existing, actual authority*, i.e. to find the social force which has sufficient authority and influence not only to control the decisive sections of the state organization, but also to justify its political-legal acts by referring to its socio-political relationships, and commitments; (b) *to find the most suitable form of expressing and exercising power*, a form which can function in the smoothest possible way, in accordance with the general will of society.

As regards the question of legitimation, it may be a simple expression of the actual power (class rule, group dictatorship, etc.), or it may be an intricate manipulation working with some refined tools of political and mass psychology. The picture given by Marx about the bourgeois society in the introduction to his work entitled *To the Critique of the Hegelian Philosophy of Law* is highly instructive: "No class of civil society can play this role without arousing a moment of enthusiasm in itself and in the masses, a moment in which it fraternises and merges with society in general, becomes confused with it and is perceived and acknowledged as its *general representative*; a moment, in which its demands and rights are truly the social head and the social heart. Only in the name of the general rights of society can a particular class lay claim to general domination."<sup>38</sup> This description of a manipulated legitimation of rule refers to the revolutionary bourgeois attempts which produced the most radical types of ideology of the time, and also provided the basis for the absolute economic and consequently, political power of the bourgeoisie. Exactly for these reasons, these manipulated ideas emerged under the guise of the people's sovereignty in the first bourgeois-radical constitutional declarations. In Article 3 of the French declaration of *The Rights of Man and Citizen* for example we find the following: "The Nation is essentially the

<sup>38</sup> Marx, K. - Engels, F.: *Collected Works*, Vol. 3, Moscow, 1975, p. 184.



source of all sovereignty; nor can any individual or any body of men, be entitled to any authority which is not expressly derived from it"; or in section 2 of the *Virginia Bill*: "That all power is vested in, and consequently derived from the people; that magistrates are their trustees and servants, and at all times amenable to them."

So it is not by chance that the young Marx searched, over and above these manipulated political generalities, for the true motivating forces of the bourgeois state, including its organizational stimuli. His sketch, made to one of his planned works,<sup>39</sup> presents his ideas about the nature of this mechanism absolutely clearly. The 1st title is characteristic in itself: *The History of the Origin of the Modern State or the French Revolution*. Before mentioning the organs of state power, he enumerates the following pairs of institutions: individual freedom and state power; liberty, equality, unity and the people's sovereignty; the state and the bourgeois society. The "representative state" seems to be the main characteristic of the state organization. He placed legislative power and the legislative bodies at the head of the organs of power in the "constitutional representative state" and in the "democratic representative state".

This was a logical consequence of all types of revolutionary-democratic ideologies in that period. This can be proved by the fact that even Rousseau, the most consistent French advocate of revolutionary radicalism, recommended the various forms of representative organizations as the basis of the practice of building the state in his work *Considérations sur le gouvernement de Pologne et sur sa réformation projetée*—as opposed to the *Contrat Social* written 10 years earlier. In his late work, he no longer spoke of the abstract exercise of an even more abstract sovereignty of the people (though he called legislation the heart of the state, there was no room in his organizational solution for the institution of representation because he regarded it as degeneration: "They have soldiers who subjugate the fatherland, and representatives who betray it"<sup>40</sup>). In the Polish draft he emphasized the powers of the imperial diet, i.e. of the representative organ, over any other organ of power, especially over executive power, for the sake of the unity of the large national territory. (He even took the stand that the diet should cooperate in the election of the senate, and wished to vest the senate with executive power proper—as a typical form of parliamentary government!)<sup>41</sup>

We must not forget that also the structure of the Constitution of the United States of America originally suggested the primacy of the legisla-

<sup>39</sup> Marx, K.—Engels, F.: *Collected Works*, Vol. 4, Moscow, 1975, p. 666.

<sup>40</sup> Rousseau, J. J.: *Du contrat social*, Paris, 1966, p. 133.

<sup>41</sup> Rousseau, J. J.: *Œuvres complètes*, Paris, 1887–1908, Vol. 5, pp. 262 et seq.

tive power: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives" (Article I, Section 1). This revolutionary standpoint was curbed immediately after the adoption of the Constitution by the opinion of the authors of *The Federalist*, of Madison in this case, according to which "... The danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations."<sup>42</sup> The disregard of these dangers was counted among the errors of the founders of the Republic, because, owing to their conservative standpoint, they did not, and could not, agree with the primacy of the representative organs, nor with the circumstance that these organs should play any special role in the expression of the people's sovereignty. Thus early bourgeois thinking was clearly divergent also on this issue. Those who believed in the principle of the people's sovereignty and its realization got under the influence of Rousseau's doubts: either there is direct, democratic legislation, or there is representation. (Cf. Article 6 of the French declaration: "The law is an expression of the will of the community. All citizens have a right to concur, either personally or by their representatives, in its formation.") According to the American revolutionary views, this standpoint could always mean the declaration of the rights of representation (e.g. Article XII of the Constitution of 1783 speaks of the statutes framed by the representative body in New Hampshire). The other trend concerning ideology, legislation and constitution is to be found on the conservative side: as a result of the manipulated nature of the principle of sovereignty, it was attempted to remove from the centres of state organization the revolutionary democrats' "invention", the elected legislator, i.e. the representative organ.

Why was it, from that era on, practically imperative for the radical advocates of democracy to attach the most direct expression of sovereignty to *some kind* of popular representation in the state organization? The primary reason for this was that the crushing, or replacement of any other organization by a new apparatus was very difficult. Consequently the citizens were wary of the remnants of the old state organization both in the executive-administrative organization and in the judicature, and could not, in fact, rely on them. So they were looking for a new, bourgeois organ for exercising power. It is true that the institution of representation was not unknown to them; but its nature had changed to such an extent that the effects of all former representative traditions inevitably ceased to influence its activity. (One of the clearest instances of

<sup>42</sup> Hamilton, A.—Madison, J.—Jay, J.: *The Federalist*, Philadelphia, 1877, p. 383, No. 48 by Madison.

this change occurred at the moment when, in the first period of the French Revolution, on June 17, 1789, the third estate declared itself to be the National Assembly.)

The institution of representation met the needs of the newly developing state also *in respect of the organization*. This was the form with the help of which it was possible to react to the changes of the political public opinion most promptly. This way an entire power organization could be brought under control by the simplest means (manipulating elections, conventional forms of political pressure), even if such control was limited by the often very successful resistance of other branches of the state organization.

The experiences of the bourgeois revolution showed at least that the representative institution is a rather suitable organizational form for a relatively *rapid transformation* of the state mechanism. All schools of the bourgeois political literature acknowledged this experience in respect of political stability and instability. The demand to restrict the former powers of the parliament arose from the conservative world of ideas which ranged from the Hamilton-Jay-Madison line of thinking up to the Fifth Republic's adherents engaged in modern political science. On the other hand, the radical publicists ranging from Rousseau to the contemporary West German Abendroth, advocate the priority and the protection of the rights of representative organs which get into contact with various strata of the population, notwithstanding the fact that the authors of our days tend to increasingly recognize the administrative attitude demanded by specialization and the division of labour.

The opinion on the correlations of the people's sovereignty and popular representation developed to be even more firm in Marxist literature. Marx, in his work *The Civil War in France*, underlined the representative nature of the Commune as one of the characteristics of the organization of the Paris Commune. "The Commune was formed of the municipal councillors, chosen by universal suffrage in the various wards of the town, responsible and revocable at short terms . . . The Commune was to be a working, not a parliamentary, body, executive and legislative at the same time."<sup>4 3</sup> It was here, therefore, that the issue of the unity of legislation and execution arose in the socialist literature for the first time as a requirement of the representative organ being the *fundamental institution* of the socialist state. This was completed by another characteristic of the socialist representative system differing from the former, namely, by the *imperative mandate*, which was regarded by Marx as a qualitative difference as opposed to any kind of parliamentarism. ". . . each delegate should be at any time revocable and bound by the *mandat*

<sup>4 3</sup> Marx, K.—Engels, F.: *Selected Works in Three Volumes*, Vol. 2, Moscow, 1969, p. 220.

*impératif* (formal instructions) of his constituents . . . Instead of deciding once in three or six years which member of the ruling class was to misrepresent the people in Parliament, universal suffrage was to serve the people, constituted in Communes, as individual suffrage serves every other employer in the search for the workmen and managers in his business."<sup>44</sup> This thesis was further evolved by Lenin in 1917, when he described the order of sovereignty based on the will of the masses, as the first characteristic of state power of the commune type. "The fundamental characteristic of this type are . . . the source of power is not a law previously discussed and enacted by parliament, but the direct initiative of the people from below, in their local areas—direct 'seizure', to use a current expression; . . . officialdom, the bureaucracy, are either similarly replaced by the direct rule of the people themselves or at least placed under special control; they not only become elected officials, but are also *subject to recall* at the people's first demand; they are reduced to the position of simple agents . . ."<sup>45</sup> Lenin formulated two fundamental ideas here: first, the unserviceableness of the abstraction "rule of the law" whenever the rule of the classes, the form of rule must be defined, since this abstraction always serves in such cases the purpose of rendering the actual class basis impersonal, indiscernible; second, he called attention to the example of the "direct" separation of powers given by the Commune, i.e. to the forms with the aid of which it is possible to bring under the population's control the state organs which had been uncontrollable till then (or were controlled only by the class organizations of the bourgeoisie). It appears from Lenin's explications that what he had in mind were not the obsolete direct democratic forms taken in a narrow sense, but, on the one hand, the constant activity of the population, and, on the other hand, control over the other parts of the state organization through the representative organs.

Lenin set forth this idea in still greater details when, on the eve of the revolution, he presented the form provided by the Soviets as the sole suitable one for realizing the people's sovereignty in the representative way: ". . . this apparatus, by virtue of the fact that its personnel is elected and subject to recall at the people's will without any bureaucratic formalities, is far more democratic than any previous apparatus . . . it makes it possible to combine the advantages of the parliamentary system with those of immediate and direct democracy, i.e., to vest in the people's elected representatives both legislative and executive functions."<sup>46</sup>

Therefore, in Lenin's train of thought the connection of the Soviet representative organs with the people's sovereignty departs from the

<sup>44</sup> Ibid. p. 221.

<sup>45</sup> Lenin, V. I.: *Collected Works*, Vol. 24, Moscow, 1974, p. 39.

<sup>46</sup> Lenin, V. I.: *Collected Works*, Vol. 26, Moscow, 1964, pp. 103–104.

earlier bourgeois organizational forms in two respects: (a) These representative organs are under the *permanent control* of the working population, by way of re-election, recall, and, in general, by way of the imperative mandate. It is of its formalism that Lenin divests the concept of representation by regarding it representative, not only in its coming into being, i.e. the election proper, but also in its entire functioning, even in its phase of ceasing. (In his aforesaid work *Will the Bolsheviks Retain State Power?* he regards the firm relations with the *various occupational branches* as one of the preconditions of the democratic representative system, which, in the initial phase of the development of the Soviets, resulted from the emergence of factory and peasant Soviets.) (b) Lenin advocated not only that all possibilities of representation should be utilized, but also that other forms of realizing the people's sovereignty should also be used. He emphasized the importance of close, unbreakable, easily controllable and renewable ties with the masses, with the majority of the people because he regarded the representative organs' activities—controllable by the population—to be one of the most practical—but by no means monopolistic forms of exercising the people's sovereignty.

The manifold nature of Lenin's concept about representation is given exactly by its revolutionary formulae: the controlled character of representation can hardly be reconciled with strict legal forms being confined to "legislative" rights. And the activation of the masses excludes the one-sided parliamentary development of the representative institutions. The overall demand for the influence of the working population—this is the most important characteristic of Lenin's world of ideas, whenever the correlations between the popular-representative organs and the principle of the people's sovereignty are considered. This model of the realization of the principle of the people's sovereignty has been the fundamental principle of all socialist constitutions.

Consequently, the traditions of the socialist constitutions can be traced back to the basic idea that if we accept the principle of the people's sovereignty as the expression of the rule of the working people led by the working class—and this must be regarded the natural and inevitable result of the socialist relations of production—we must create an adequate power organization.

It is well known that the system of government by parliament was not the last word of the bourgeois theory of state and political science. Following the short period during which the radical bourgeoisie regarded itself the only one that expressed the needs of the entire society, and used parliamentary monism as its weapon, it soon began to speak of the "terrorism" of popular representation and began to search feverishly for a *pouvoir neutre*. It believed to find it in the form of a monarchy or in the institution of the president, so for a while this person became the centre of

power, the carrier of sovereignty. In a century, all this led directly to the leading position of the specialized administration, which was expressed in the concept of rationalized power, and later in the concept of the administrative state. Following the decline of non-political, conservative administration, the bourgeoisie had to find a new centre of power; the ideal of the *Richterstaat* took shape this way—for the time being in theory—although certain countries had gone even beyond this step. All this shows that the conclusions on the people's sovereignty in the bourgeois constitutions did not affect the fundamental thesis of the state-organizational model. The rule of the popular representative system was not the consequence of this declared principle. The centre of power took shape according to the historical demands and needs of the bourgeoisie. Parliamentarism—in its initial forms where elections were most often based on property qualifications—was replaced by the one-man centre of power of the head of state, and then by the power of the bureaucratic apparatus. It is true that the representative institutions did not vanish completely in the latter cases, but their subordinate role and insignificance shifted them to the margins of the constitutional model and, especially, of the real state activities.

A comparative study of the socialist constitutions, on the other hand, shows that the direct consequence of the principle of the people's sovereignty in these constitutions has been up to the present day, the fact that the essence of people's rule has been identified with *the organs of popular representation*, i.e., with institutions able to maintain the closest and most direct relations with the population.

It is a fact in the traditions of socialist state-organization that the constitutions regard the central position of the representative organs as the most important form of realizing the principle of the people's sovereignty. The realization of this principle is outlined in the socialist constitutions mainly on the basis of the *supremacy of popular representation*.

How did this interrelation of the popular representative system and the people's sovereignty become manifest in the socialist constitutions, and especially in the socialist constitutions of our days? The first provision of law stating that all power had passed into the hands of the representative organs of the proletariat and other working strata was the proclamation of the 2nd All-Russian Congress of Soviets. It declared the absolute power of the Soviets, which, in fact, was a repetition of the earlier revolutionary slogan: "All power to the Soviets!" According to the said proclamation, "Henceforth all power is vested in the Soviets". At the same time, the commissars of the provisional government were divested of their powers. This was followed by a fully clear legal connecting of the principle of the people's sovereignty with Soviet power in the Constitution of 1918: "The

Russian Republic is the free socialist society of all peoples of Russia. In the territory of the RSFSR, all power is vested in the country's entire working population united in town and village Soviets." (Part Two, Chapter V, Article 10). This was reinforced by Article 1 of the declarative part of the Constitution which stated that this is not to be understood as local power only, but "all power is vested in these Soviets in the centre as well as locally". The unity of the people's sovereignty was therefore coupled also with the unity of the representative system and of popular representation in the socialist state. It is very important to note this because the absolute power of the Soviets was based at that time—and up to the Constitution of 1936—on their structure built up from below: this was the original legitimation of their rights, this expressed the fact that the Soviets of various levels, built upwards from below, are the authorized organs of the entire working population.

In 1936, this form of power legitimation was replaced by direct elections on all levels. Article 3 of this constitution used the wording of 1918, with a minor difference, for the definition of the way to exercise people's sovereignty: "In the USSR all power belongs to the working people of town and country as represented by the Soviets of the Working People's Deputies." This translation is, in fact, not quite accurate because the original text uses the expression *υ lice*, which means that the working population is "personified" by the Soviets. (The working population is personified by the Soviets of the working population's deputies.) Article 2 of the Constitution of 1977 declares: "All power in the USSR belongs to the people. The people exercise state power through Soviets of People's Deputies, which constitute the political foundation of the USSR." The expressions in the Constitutions of 1918, 1936 and 1977, accurately reflect the forms of legitimation in the given period. While, in the first case, the wording expressed the actual process of "uniting" in the Soviets, in 1936 the term used was *direct personification*, meaning simple and proportional representation. Both constitutions, even if they were framed under extremely different circumstances, connected the principle of the people's sovereignty (all power—*υsya vlast*) directly with the power exercised by the Soviets, i.e. the *unified* Soviet organization, not only in the centre or only locally, but both in the centre and on local levels.

It has been a typical feature of socialist constitutions that several attempts were made to lay down the interrelation between the people's sovereignty and popular representation in some form. In cases, however, where there was no uniform designation for representative organs of various levels (central and local), this was a rather complicated task. Various formulae were used for emphasizing the *unity of the organization*. The most abortive among these was certainly the form used in the Hungarian Constitution which, after declaring the principle of the people's

sovereignty ("all power belongs to the working people"), tried the unification in the following formula: "The working people of towns and villages exercises power through their elected delegates who are responsible to the people" (Article 2, Paragraph /4/). But, after all, the Constitution granted no individual rights whatsoever to the deputies, which is all the more understandable since it is only the organs composed of such deputies that may exercise any kind of power. Paragraph /2/ of Article 19 assigned, rather rigidly, the exercise of "all rights deriving from the sovereignty of the people" to the parliament (i.e. not even to all representative organs, let alone the deputies active in such organs).

One of the European socialist constitutions, the Czechoslovak one of 1968 (Article 2), gives expression to the aforesaid correlation by stating: "... the working people shall exercise state power through the following representative bodies: the Federal Assembly, the Czech National Council, the Slovak National Council, and the national committees".

According to Part IV of the "Basic Principles" of the Yugoslav Constitution of 1974: "self-management by the working people in the basic organizations of associated labour, local communities, self-managing communities of interest, and other basic self-managing organizations and communities shall be the basis of a uniform system of self-management by and power of the working class and all working people". Also: "The assembly is a social, self-managing body and the supreme organ of power within the framework of the rights and duties of the socio-political community." (Article 132), and: "Every assembly shall form a chamber of associated labour, as the chamber of delegates of working people in organizations of associated labour and other self-managing organizations and communities of labour; a chamber of local communities, as the chamber of delegates of the working people and citizens in the local communities, or a chamber of Communes, as the chamber of delegates of the working people and citizens in the Communes; and a socio-political chamber, as the chamber of delegates of the working people and citizens organized in socio-political organizations" (Article 144).

The Rumanian Constitution of 1965 links the problems of sovereignty and representation in a somewhat complicated way—considering the differences of designation on the central and local levels—but nevertheless, most accurately: "The sovereign holder of power, the people, shall exercise this power through the Grand National Assembly and the people's councils . . ." (Article 4).

The Constitution of 1968 of the German Democratic Republic separates these two provisions unlike other socialist constitutions. It states, on the one hand, that "all political power in the German Democratic Republic is exercised by the working population of towns and villages" (Article 2, Paragraph /1/); on the other hand, that "the citizens of the



German Democratic Republic exercise their political power through democratically elected popular representations" (Article 5, Paragraph /2/).

Article 89 of the Soviet Constitution of 1977 declares the unity of representative organizations: "The Soviets of People's Deputies, i.e. the Supreme Soviet of the USSR, the Supreme Soviets of Union Republics, the Supreme Soviets of Autonomous Republics, the Soviets of People's Deputies of Territories and Regions, the Soviets of People's Deputies of Autonomous Regions and Autonomous Areas, and the Soviets of People's Deputies of districts, cities, city districts, settlements and villages shall constitute a single system of bodies of state authority."

From among the Asian socialist constitutions the first Constitution of the Democratic People's Republic of Korea does not emphasize the unity of the representative organization in the same way as the aforesaid constitutions do. The relationship of sovereignty and representation is defined in Article 2 as follows: "In the DPRK power is vested in the people and realized by it *through* the supreme organ of state power, the Supreme People's Assembly, and with the *cooperation* of the local organs of state power functioning in the form of people's assemblies."<sup>4 7</sup> Here, already on the constitutional level, a difference was made between the supreme organ of state power and the local organs concerning their share in the exercise of sovereignty. In 1972, however, the Constitution declared in Article 7: "The working people exercises its power through its own representative organs, i.e. through the Supreme People's Assembly and through the local people's assemblies of various levels."

Article 2 of the Chinese Constitution of 1954 stated that "in the People's Republic of China, all power is vested in the people whose representatives are the National Peoples's Congress and the local people's assemblies". (According to Article 3 of the Constitution of 1978: "The people exercises the state power through the National People's Congress and through local people's assemblies of various levels.") The wording of Article 4 of the Vietnamese Constitution of 1959 is similar: "In the Democratic Republic of Vietnam, all power is vested in the people who exercise it through the National Assembly, and through the people's councils of various levels, elected by it and responsible to it." (After exposing the representative principle, both constitutions point to democratic centralism.)

It is the text of the Mongolian Constitution of 1960 that most resembles the text of the Soviet Constitution of 1936: "All power in the Mongolian People's Republic is vested in the working people who implement that power through the state representative bodies—the Hural

<sup>4 7</sup>Italics are mine, O. B.

of People's Deputies." (Article 3). Here the expression is the same for the representative organs of all levels, just as in the case of the Soviets.

Thus, no considerable difference can be seen between the above-mentioned socialist constitutions as regards the organization expressing sovereignty. As a rule, the entire representative organization is regarded as the carrier of sovereignty. The Cuban Constitution of 1959, in Article 2 of Part I dealing with the nation, the national territory, and the form of government, expressed the actual exercise of sovereign rights with an entirely different phrase: "Sovereignty is vested in the people, and all power of the state springs from the people." But the Constitution did not mention the representative organs, although it discussed franchise in detail—along with the right of referendum. It is, therefore, not representation that stands in the centre of the state organization; it is the council of ministers which is a legislative and, simultaneously an executive organ. (According to Article 4 of the new Constitution: "... all power is vested in the working people, which exercises it through the assemblies of people's power and through other state organs created by the latter in a direct manner.")

The representative system, which expresses sovereignty in the most direct way, must be regarded in its homogeneous form as a surface feature of the state-organizational model. Still, it is a starting-point from which the basic intent of the framer of the constitution may be clearly examined. Such a basic principle does not allow the elected representative organs to be shifted to the insignificant position of the state-organizational model; their development and rights must be regarded as current problems.

## 2. Other Problems of Expressing the People's Sovereignty

There is one more question not clarified in our discussion so far. I have tried to define the place of popular representation as connected to the principle of the people's sovereignty, but have not spoken of what kind of institution I mean by "people's representation". Is it a constant element in socialist political science? Has it always been understood in the same form, or have there been changes in form and contents as well? The socialist representative system has been drawing on two traditions. These are in contradiction with each other—if not in practice, but in theoretical debates even today—and the question of their value for the socialist state *of today* is raised again and again. These controversies show that the question of what the model of popular representation actually is cannot be regarded as decided even now. However, anyone may feel that all I have presented in the foregoing under

the name "people's representation" is mostly connected with universal and proportional suffrage—except for the Yugoslav institutions.

The *theoretical* standpoint of socialist political science was inspired by two factors: first of all by the arsenal of radical bourgeois democratic ideas opposing any restrictions of suffrage on the basis of property modifications, especially during the French Revolution. The idea of universal suffrage was, in this case, combined with the hope that in industrially advanced countries the working class would elect *their own* delegates and would thereby form a working-class majority in the representative bodies. Marx himself took this stand in connection with the Paris Commune: "The Commune was formed of the municipal councillors, chosen by the universal suffrage in the various wards of the town . . . The majority of its members were naturally working men, or acknowledged representatives of the working class."<sup>48</sup> Thus, in this case Marx regarded quite natural the effect of universal suffrage of automatically showing the class proportions of the society. This optimistic vision of the proletariat and pessimistic vision of the bourgeoisie actually characterized the end of the 18th century and almost the entire 19th century; the bourgeoisie tried to exclude the working class from the possibility of representation by applying property qualification in voting, while the socialist and radical petty-bourgeois movements wanted to secure the participation of the working class in national representation by means of universal suffrage. The original value of universal and proportional suffrage was seen by the Marxists in the potential to "transform" in this way the organization of the working class into a majority power, i.e. the given state power into the dictatorship of the proletariat.

The other tradition was contrary to the course of universal suffrage, although not in the long run. This would have used the *professional organizations* of the working class, and in general, of the working population, for performing various *power functions*. The source of this conception doubtless betrays syndicalism, even more, the cooperative attempts of utopian socialism. The necessity of a detached power organization (detached because not based on universal suffrage) appeared especially when and where those forces of a society had to be taken into account in which the proletariat had not yet grown powerful and remained a minority behind the peasant and petty-bourgeois masses. In such a society, therefore, the politically most consistent and revolutionary class, the proletariat could not have seized power through universal suffrage, could not have used the state organs for attaining revolutionary socialist ends. In 1905, the early experience of the Soviets was used by

<sup>48</sup> Marx, K.—Engels, F.: *The Civil War in France. Selected Works in Three Volumes*, Vol. 2, Moscow, 1969, p. 220.

Lenin for regarding this *proletarian organization* as the basic model of a new state organization. "Guided by their class instinct, the workers have realised that in revolutionary times they need *not only* ordinary, but an entirely different organisation . . . they have set up a *Soviet of Workers' Deputies*; they have begun to develop, expand and strengthen it by drawing in *soldiers'* deputies, and, undoubtedly deputies from rural *wage-workers*, and then (in one form or another) from the entire peasant poor," writes Lenin in the third letter of *Letters from Afar*, and then continues: "The prime and most important task, and one that brooks no delay, is to set up organisations of this kind in all parts of Russia without exception, for all trades and strata of the proletarian and semi-proletarian population without exception, i.e., for all the working and exploited people, to use a less economically exact but more popular term."<sup>49</sup>

This type of representation—this, too, was representation beyond doubt—wished to realize in its conclusion a *majority rule* of the working class, just as the Commune did with its experiment of universal suffrage. But the outcome was rather dissimilar from the angle of the state-organizational model. While in the former case the universality of the election, in principle, granted representation to all layers in an organ resembling Parliament; in the case of the Soviet type a basically professional, i.e., class representation emerged—with the absence, the exclusion of the bourgeoisie from the very first moment. It is typical that when the first Soviet constitution was being framed, it was planned to prove the participation in productive work, or work useful to the society,—the prerequisite of the right to vote—through the certification of trade union membership.<sup>50</sup> Paragraph 70 of the Constitution of 1918 stated that concerning the participation of the trade unions and other workers' organizations in the elections, decision would be made on the basis of measures taken by the Central Executive Committee of the All-Russian Soviets.

As it is well known, the Soviet constitutional development fairly soon shifted from professional representation to strata-representation which was restricted, not universal, but was not even to be taken in the old sense and then, in 1936, to universal, equal and proportional suffrage. What we must always keep in mind here is that the distinguishing mark between these two types of representation is not solely the restrictive, exclusive nature of the former one. What Lenin's conception regards as one of the characteristics of the apparatus of the Soviets is that " . . . it provides a close contact with the most varied professions, thereby facilitating the adoption of the most varied and most radical reforms without red tape".<sup>51</sup> Lenin laid stress not on the negative, excluding features of

<sup>49</sup> Lenin, V. I.: *Collected Works*, Vol. 23, Moscow, 1974, p. 324.

<sup>50</sup> Gurvitch, G. S.: op. cit. p. 48.

<sup>51</sup> Lenin, V. I.: *Collected Works*, Vol. 26, Moscow, 1954, p. 103.

professional representation but rather on an *intensified connection* with the various proletarian and semi-proletarian layers, a representative and work-connection *closer* than anything else. And this has lost nothing of its timeliness with the defeat of the exploiting classes and with the alleviating of the conflicts between the working strata.

To translate all this into the language of our days: the socialist states are confronted with the question whether the system of representative organs created on the basis of universal suffrage can sufficiently express *social reality*. Or, more exactly: is it not necessary for those taking part in production, viz., the working class and other working, productive strata as the most progressive part of society, to get their own representation, and, being organizationally separated, to find suitable ways to influence the state on the basis of their special needs? Several conceivable variants might be possible here: multicameral representation, with the producers' special representation as one of the branches; with an accurate definition of the trade unions' rights to reach political decisions; through the combination of the regional electoral system with the form of workshop-constituency etc. But it is not the forms that are the most essential. Experimentation has been made with them in various periods, in different socialist countries, such as Yugoslavia, the German Democratic Republic, the Soviet Union and Poland. What is important here is to realize that the present-day mechanism of our society demands a more up-to-date model of the political representation; a model not alien to Marxism—Leninism, as Lenin outlined it as an urgent *necessity of the time* in the most decisive period: before October.

The problem of the nature of popular representation presents itself along with the question of representation. Most socialist constitutional models of our days take into account a political (state-power) function of the popular-representative organs. Thus the sovereign right of popular representation does not exceed the limits of the functions of legislation, control, and the direction of the organs of the state. The socialist state is given economic, production, etc. responsibilities, as a consequence of the fact that the bulk of factories, enterprises became public property. Their control and management is, for the most part, not a task of the law or the state authority, it is an economic-organizational work. Thus, the second question is this: do the representative institutions play any role in this field? Can this function be detached from the sphere of the people's sovereignty, can it be placed under the control—if only the abstract control—of the national representative organs through hundreds of interconnected links?

However complicated the state-political-production model is rendered by this "novel" type of representation, it has become increasingly clear by now that the conclusions we have drawn for the construction of the

political organization must not be neglected even in respect of production, the most important sphere of socialist life. If we say, for example, that the demands of the most progressive strata must not be disregarded in the various spheres of political activity, this is valid, with due variants also for production.

In the second phase of constitutional development (after Lenin's death), the socialist political views tended, almost without exception, towards regarding the constitution as a state and political document only, and accordingly, the state-organizational model outlined in it extended only to the narrowest, we might as well say the "power" apparatus. The state organs and institutions realizing the functions of the state, not in the narrowest sense and expressing imperium, were dealt with by these constitutions, if at all, only quite superficially. Yet, according to the generally held political and legal views of our days, we must go beyond the former definition of the constitution for various reasons, and must shape the socialist constitution of the future to be not a mere political state document, but also the basic law of society and its progress.<sup>52</sup> The first consequence of this requirement was that the former regulation of the state organization in several new socialist constitutions became less rigid and reference is made to the social influence zones of the state activity in these fundamental laws. It is true, that the constitutions did not become suddenly "social" in this way, but the power organization ceased to be one-sidedly overemphasized in the constitution. This "loosening up" permitted to include in the constitution some state activities whose power quality was perhaps secondary; consequently they could not be placed in the traditional scheme of Montesquieu.

Paragraph /3/ of Article 11 of the Czechoslovak Constitution of 1960, for example, emphasizes the coordination and accord of the economic activities of the socialist economic organizations, but points out at the same time the "participation and enterprise of the working people and their organizations, particularly the Revolutionary Trade Union Movement" on all levels of management. (This constitution was the first to incorporate in the constitutional state organization the so-called social tribunals as regional and workplace people's tribunals, in Article 101.) The Yugoslav Constitution of 1974, as well as the constitutions of the various republics, contain detailed rules on the socio-economic system, on the organizations of associated work and on self-managing communities of

<sup>52</sup>I do not touch upon the detailed train of thoughts connected with this; I refer to the explanations of István Kovács in *New Elements in the Evolution of the Socialist Constitutions* (Akadémiai Kiadó, Budapest, 1968, pp. 70-103) and to the study of Djordjević, J.: *Conception générale et structure de la nouvelle constitution de la Yougoslavie*, In: *La Constitution yougoslave de 1963*, Paris, pp. 2-4.

interest (cf. Articles 51–59 of the Federal Constitution and on self-management in local communities, Articles 114–115).

Chapters II, III and IV of Part Two of the GDR Constitution of 1968 are surprisingly new as to their formulation. It is attempted in these Chapters to define the status and the rights of industrial units, towns and villages, of trade unions and socialist production cooperatives under the circumstances of a socialist society. It is only natural after all this that this Constitution considers the exercise of sovereign rights also in new fields, and deals also with the institution of representation as the manifestation of the working population's rights in these fields. Article 42 states: "In production units which are active in creating and increasing social property, the employees shall take part in control directly and through their elected organs." The chapter dealing with the trade unions states, among others, that the free trade unions, being the class organizations of the working class, take part in the shaping of the most important decisions within the framework of the state, its economy and society. "The trade unions, through their organizations and organs, through their deputies taking part in the elected power organs of the state, and through their suggestions presented to the state and economic organs, play an important role in the shaping of the socialist society, in the planning and management of the national economy, in the realization of the scientific-technical revolution, in the improvement of working and living conditions, in health protection and labour safety, in the development of labour-culture as well as in the cultural and sports activities of the workers." (Article 44, Paragraphs /1/ and /3/). Chapter 46 on the production cooperatives touches upon the same idea: "Through their organizations and their representatives active in state organs, the agricultural production cooperatives actively take part in the state planning and direction of social progress." (Article 44, Paragraph /2/).

Article 10 of the Bulgarian Constitution of 1971 also mentions the position and role of social organizations within society.

Article 7 of the Soviet Constitution of 1977 on the tasks of the trade unions, the youth organization, cooperatives and other social organizations and Article 8 on the work collectives may be regarded as very important.

It appears from all these examples that the most recent socialist constitutional development takes into consideration the increasing role of social elements in the state organization as well as the fulfilment of state tasks. Simultaneously, the new formulation of popular representation is included in these constitutions. But this representation is not the one appearing in the organs of power, it is rather a type of economic control. This means that, also here, popular representation is present, only divided not according to national or state-territorial dimensions, but by production units.

The democracy of *industrial and regional* units belongs to the concept of the people's sovereignty just as the representational structure of the organization of state power. These representative organizations must be regarded as two different branches in the realization of the people's sovereignty. This being so, the principle of the constitutional priority of the representative organs must be examined in this wider sense. At any rate, in the light of these considerations, we must try to give the principle of the people's sovereignty a present-day interpretation.

We must, on the other hand, follow the process by which the *specific representation* of the *working class* and the *producers* is carried beyond the framework of industrial units (or, according to the Yugoslav formulation, the basic organization and community of associated work), and is granted powers, in the political and power organization of the state. The fact that several attempts have been made to establish this system, does not mean that this problem was not raised by history. The fact that the industrial-technical revolution has raised new problems, differing from the former ones in connection with specialization makes it probable that this is a crucial problem for representation. If "crude" representation has heretofore rendered probable the widest possible, "universal" participation of the population in the specified acts of will and the controlling functions of the state, a "refined" participation, i.e. participation by branches of production, has become necessary by now in order that the working class should be able to give answers to the *most important economic and technical questions* in the state organs of appropriate levels.

The constitutional experiments of our days employ several forms of solution for this purpose. Over and above the ideological differences—what I have in mind here is the Yugoslav theory of self-management—the reason for their variety is to be found in the organizational level of the working class and the traditions of their organizations. Wherever the trade unions, prior to the immediate fight for socialism, were the revolutionary and consistent organs of the working class, wherever they survived as the true defenders of interests against the most reactionary attempts of the bourgeoisie, these workers' organizations meet the requirement of embodying the protection of the socio-economic demands of the working class also under socialist circumstances. It is, therefore, not by chance that certain socialist countries try to find in the trade unions the key institution for the industrial and economic representation of the working class.

Other, direct or indirect possibilities of representation may be considered, even in cases or places where these conditions are not given. The Rumanian solution by which the agricultural cooperatives are directed on the basis of representation, or the variety of self-administrative forms in the Yugoslav constitutions—all show that the new position of



representation may be found in many fields of the socialist state organization.

It appears from this manifoldness, too, that—at least in the European socialist countries—the use of representation on a wider basis, a more specialized representation of the working class also in the organs of state power which fulfilled the functions of general representation till now, may be regarded an overall trend.

### 3. The Foundations of the Structure of Representation

The problem of the structure of representation coincides with the problem of how to build up a socialist state—provided that the question is considered in terms of history. This is proved by the history of both the Paris Commune and the Russian revolution.

The Paris Commune prepared the outlines of the country-wide organization, but was no more able to realize it. According to Marx, the end in view was “. . . that the Commune was to be the political form of even the smallest country hamlet . . . the rural communes of every district were to administer their common affairs by an assembly of delegates in the central town, and these district assemblies were again to send deputies to the National Delegation in Paris . . .”<sup>53</sup> This model clearly reflects a pattern of representation built upwards from below, and, it furthermore agreed with earlier socialist ideas according to which this structure could be built up with the help of indirect elections. This formula was produced as the result of the notion that the “commune” (community) constitution is the fundamental one; for it was here that the “self-government of the producers”—as Marx put it—could develop without any complication. This community structure was historically the first one in 1871 to lay down the foundation of the system of representation upwards from below, and the legitimization of the national representation from below.

The debate on the structure of Soviet power during the preparation of 1918 is well known. The *Conspectus* prepared by the People's Commissariat of the Interior, and, from that time on, many preparatory documents took stand for building the Soviets upwards from below, and hall-marked this conception with the term “Federative Republic of the Soviets”.<sup>54</sup> The term “All-Russian Socialist Federative Republic of Soviets” actually reflected not only a structure going upward from below (which was historically true and, at the time of the indirect electoral system, a political reality as well), but also the fact that the “federation”

<sup>53</sup> Marx, K.—Engels, F.: *The Civil War in France, Selected Works in Three Volumes*, Vol. 2, Moscow, 1969, p. 221.

<sup>54</sup> Gurvitch: *op. cit.* p. 7. and p. 97.

of the given state was a relatively loose alliance of the Soviets. However, in the second proposal of the section drafting of the bills the expression "Russian Soviet Federative Socialist Republic" was used, which, in fact, brought no change in the structure of the Soviet power, but suggested the building up of a somewhat more centralized apparatus instead of a looser state organization.<sup>55</sup> (This standpoint reflected the spirit of the resolution *On the Federative Institutions of the Russian Republic*, passed on January 28, 1918, by the 3rd All-Russian Congress of Soviets which stated in Article 2: "Within the framework of the federation, the supreme organ of power is the All-Russian Soviet Congress of the Workers', Peasants' and Cossacks' Deputies . . .")

It was no longer the question of denomination, but the principles of building up power that were raised in subsequent debates in the committee drafting the Constitution. "... the essence of the differences of opinion was the issue whether the preparatory committee should begin its work with defining the structure and powers of the local Soviets, or it should first do the same in respect of the central organs of power."<sup>56</sup> The opinion that "the sovereign is the primary Soviet" was voiced several times, but this did not affect directly the framing of the constitution in this case. It is interesting to note that it was Stalin who eventually insisted on regarding the federation as the basic question and thereby gave the preparation a centralistic course in a certain sense. (I only wish to give an example of the scope and later effect of the debate going on in the committee by calling attention to the suggestion of M. A. Reisner who said that "it is the federations and organizations of the workers, peasants, Cossacks, and of the working population in general, that form in the country the federative communities directing the socialist economy, organizing the state life and cultural activities. Such local communities are called communes". The federation of these communes, headed by the Soviets, would form the province, whereby the federation would be built upwards.<sup>57</sup> According to Reisner's report, in this case federalism would be "not a federation of territorial states and member states, but a federation of socio-economic organizations".<sup>58</sup> In the course of the subsequent debate Reisner abandoned his earlier standpoint.)

The last draft (prepared by the People's Commissariat of Justice) before the presentation of the constitution bill was still based on the system of local Soviets and their congresses in its part about the "general principles", and dealt with the organs of the federation only after this.

<sup>55</sup> Ibid. p. 10.

<sup>56</sup> Ibid. p. 22.

<sup>57</sup> Ibid. p. 111.

<sup>58</sup> Ibid. p. 29.

Yet the Constitution of July 10, 1918, turned the "pyramid" upside down for good: although it stated in Article 10 that "in the territory of the Russian Socialist Federative Soviet Republic all power is vested in the country's entire working people united in the town and village Soviets", there is a statement echoing in Article 12—repeated in Article 24—as follows: "In the Russian Socialist Federative Soviet Republic the supreme power is vested in the All-Russian Soviet Congress, and, between its sessions in the All-Russian Central Executive Committee of the Soviets." Thus, here the "sovereign" is by no means the "primary Soviet" any more; it is rather a national Soviet organ, the congress, appearing at the top of the Soviet structure.

All this is not to mean, however, as though the structure of the representative organization would have changed, since the principle and the practice of the indirect elections did not change at all; only the foundations of their powers were modified, and, what is more, in a centralistic direction. Quite typically, this rather sparing enumeration of the duties of the *oblast*, provincial, *uiezd* and *volost* Soviets, of the Soviets' deputies begins with the obligation to carry out all orders of the respective superordinate Soviet organs of power; and it is only after this that the enumeration passes over to a general formulation of competences such as taking measures required for improving the cultural and economic standard of a given territory, or decisions in issues of purely local nature, as well as the coordination of all the activities of the Soviets.

This was the end of using the original "pyramid" model in the Soviet constitutions. The all-union Constitution of 1924 described the powers of the federation by entrusting them to its "supreme organs". This formulation was further developed by the 1936 Constitution of the Soviet Union: in Article 3 it partly retained the formula: "In the USSR all power belongs to the working people of towns and country as represented by the Soviets of Working People's Deputies", but stated the following provision in Article 14: "the jurisdiction of the Union of Soviet Socialist Republics, as represented by its highest organs of state authority and organs of government, covers:" and then in Article 31: "the Supreme Soviet of the USSR exercises all rights vested in the Union of Soviet Socialist Republics in accordance with Article 14 of the Constitution, in so far as they do not, by virtue of the Constitution, come within the jurisdiction of organs of the USSR that are accountable to the Supreme Soviet of the USSR, that is, the Presidium of the Supreme Soviet of the USSR, the Council of People's Commissars of the USSR and the People's Commissariats of the USSR." Article 32 of the Constitution stated the exclusive right of the Supreme Soviet only in respect of all-union legislation. Concerning the local Soviets, the same constitution only stated that these are the local (regional) organs of state power. This constitution did not speak of their

authority, of their former so-called absolute power (*polnота vlasti*), while Article 79 of the Russian Constitution of 1936 declared the following in connection with the authority of the local Soviets: "The Soviets of the working population's deputies . . . direct in their territories cultural, political and economic activities, prepare the local budget, direct the activities of the administrative organs subordinate to them, protect the order of the state, promote the increase of the country's defensive capacity, ensure the protection of the law and of the citizens' rights."

By this time the homogeneous structure of the representative organs, of the Soviets, seems to have completely disintegrated. This tendency was strengthened by the circumstance that the Constitution of 1936 abolished the indirect electoral system of the Soviet organization, which, till then, had maintained—at least formally—the legitimation of the superior Soviet on behalf of the local, lowest-level, i.e. town and village Soviets. The sovereign rights were now devolved upon the supreme all-union or republican Soviet organs not through the medium of the lowest-level (primary) Soviets, but through direct elections. The supreme Soviets were vested in this way with more powers—being elected by the population of the entire Union or a Republic—than the local Soviets of various levels, whose constituents lived only in a part of the national territory. Actually this electoral system was the one that justified the separating of the representative system and the turning upside-down of the "pyramid" of the constitutional model.

Although Article 2 of the Soviet Constitution of 1977 speaks of the uniform exercise of state power through the Soviets (all other organs are "uniformly" under the control of Soviets and are accountable to them), and according to the already quoted Article 89 also speaks of the fact that the Soviets constitute a uniform system of state power organs, still their power situation is rather different. When Article 73 enumerates the jurisdictions of the Union of Soviet Socialist Republics it declares that "as represented by its highest bodies of state authority and administration" these belong to the jurisdiction of the Soviet Union.

The constitutions of people's democracies raised the issue of the separation of the representative organization and the issue of the special rights of a supreme representative organ even more sharply. Paragraph /2/ of Article 19 of the Constitution of the Hungarian People's Republic declares that "the Parliament exercises all rights deriving from the sovereignty of the people" (italics are mine, O. B.), as a result of which the authority of the local representative organs was reduced to a question of mere *delegation*. The Polish Constitution uses a similar term. While it states in Article 2 that "the working people exercise the authority of the State through their representatives elected to the Sejm of the Polish People's Republic and to the People's Councils on the basis of universal,

equal and direct suffrage secret ballot" (i.e. it indicates the principle of a uniform exercise of state power in all the representative organs), this formulation is already narrowed down in Article 20: "The Sejm, which is the highest representative of the will of the working people of town and country, realizes the sovereign rights of the Nation" (Paragraph /2/). Concerning the people's councils, Article 44 states in a somewhat broader formulation than the Hungarian Constitution that they "express the will of the working people"; which, however, differs from the Sejm's "sovereign" rights even so.

The Czechoslovak Constitution of 1968, in Paragraph /2/ of Article 2 already cited made an attempt at integrating the "representative organs of the working people" (the Federal Assembly, the Czech National Council, the Slovak National Council, and the national committees) through which the working population exercises state power. Article 4 of the Rumanian Constitution of 1965 shows a model of integration and, at the same time, an outstanding position of the supreme representative organ, the Grand National Assembly.

It is the 1974 Constitution of the German Democratic Republic that draws the sharpest distinction of all the new socialist constitutions between the character of the supreme organs of state power and representation and the local representative bodies. In discussing the questions of the political basis it states that "the popular representations form the foundation of the system of the state organs" (Paragraph /2/ of Article 5), but it makes such a clear distinction between the People's Chamber and the local popular representations that this system can hardly be called homogeneous. The parliamentary character of the People's Chamber is underlined in this constitution (it is the only constituent and legislative body which, in addition, elects the most important state organs and ratifies international treaties), while, in respect of the local popular representative organs attention is drawn to the executive powers. It is instructive to compare the second sentence of Paragraph /1/ of Article 48 (the People's Chamber "decides in its sessions the fundamental questions of state policy") with the provisions of Paragraph /2/ of Article 81, saying that "the local popular representative bodies decide upon all matters concerning their territories and citizens on the *basis of the laws* within their own jurisdiction" (italics are mine, O. B.). It means that the jurisdiction of the local power organs can be determined only on the basis of laws, and that there is no "gap" left open by the constitution that these popular representations can fill in. They may exercise power only in cases expressly stated by law (the *ultra vires* principle).

All these constitutional models—despite their obvious dissimilarities—have shown since 1918 a uniform scheme of the structure of the representative system: on the summit, above the other organs of popular

representation there is a national, supreme organ of popular representation as the embodiment of sovereignty, elected directly or indirectly. The supreme representative organs of the federation and the republics in the federal states are organized below this level in a hierarchy according to territorial size. The regional and the local organs of popular representation are on still lower levels.

Some socialist constitutions (the Chinese of 1978 in Article 3, Paragraph /3/; the Vietnamese of 1960 in Article 4, Paragraph /3/; that of the GDR of 1968 in Article 47, Paragraph /2/, the latter referring to people's sovereignty, and also Article 3 of the Soviet constitution of 1977) emphasize the democratic-centralistic character of the model already in the field of the representative system. There are, however, great differences in the interpretation of democratic centralism in these constitutions. Let me refer to Article 16, Paragraph /2/ of the Soviet Constitution on economic management. Democratic centralism decides the internal structural pattern of popular representation from the outset. And even if the traditions of these models now are half a century old, we should not say that this question has been answered once for all. This conclusion is based not only on contrasting constitutional attempts (on the Yugoslav constitution, first of all), and on suggestions at decentralization which have been coming up again and again for some fifteen years now, indicating actually a definite trend. In my opinion the experiments with new economic management systems will affect also this field. The former strict centralization of planned economies not only thwarted the independence and free manoeuvring of enterprises, it also degraded the local and regional organs of popular representation—entrusted with the direction of local and regional development, with communal activities—to the status of mere executive organs. If, therefore, we wish to avoid this impeding effect of the earlier economic systems, this applies not only to industrial units, enterprises, to economic institutions taken in the strict sense, but also to the organs of local economic administration, of communal development, to representative organs on the village and town level (as is reflected in the Constitution of the German Democratic Republic).<sup>5 9</sup>

A different manner of building up the representative organs was elaborated by the Yugoslav constitutions, especially since that of 1953. Not only the hierarchy of the representative organs is involved in these cases, but naturally the changes affect the organs themselves. The basic principle of the Yugoslav model of that time was that the village

<sup>5 9</sup>Cf. with the investigation of this trend by this author: (Bihari, O.) Бихари, О: "Проблемы развития советов в социалистических государствах" (Problems of the evolution of councils in socialist states). *Acta Iuridica Academiae Scientiarum Hungaricae*, Tomus XI (1969) Fasc 3-4, pp. 295-319.

community was the basic unit in the Yugoslav society. The platform of the Yugoslav Communists' Federation stated: "The village, as the fundamental socio-economic community, is the cell of the social organization . . ." While the basic characteristic of the aforesaid socialist constitutional models is centralization, and the local, i.e. village (town) organization is but a section of the homogeneous state organization, and exercises for the most part rights reserved or "left open" to it by the central power (this applies also to the representative organs), the Yugoslav model contains a different solution. The Yugoslav model of 1953 seems to have returned to the conceptions prior to the Soviet-Russian Constitution of 1918. Here the basic cell of the social organization is the village community; other social units such as the republics or the federation, or, possibly, the autonomous provinces and districts, emerge as the summation of the village communities. The Federal Constitution of 1974, however, no longer stressed the aforesaid standpoint regarding this subject.

The Yugoslav model differs from those of other socialist countries not only in that it produced a "reverse" structure through the system of election and through the constitutional hierarchy, but also that in compliance with this, the rules concerning the spheres of authority changed. The duties and obligations of the representative bodies—in villages and elsewhere—were defined on a broad basis and were separated from one another. This is supported by the right of the communities to issue regulations which shows in the background the strong, independent authority of the communities.

In terms of the representative organs, these two models show the following effects:

(a) If the organ at the peak of the representative organization becomes constitutionally the *"unlimited" representative of the people's sovereignty*, it will get detached from the other sections of the representative organization not only organizationally, but also in its jurisdiction. It becomes "parliamentary" in the sense that most of its activities are taken up by the "representation" of sovereignty. The "national" character of this organ elevates it too high over the other representative organs. Strong efforts must be made in this case—partly by a repetition of political decisions, partly by means of central legislation—to break through the front of legislative parliamentarism, to assume other functions of the supreme representative organ, and, on the other hand, to shape the appropriate and practicable authorities of the lower representative organs.

(b) In the case of the aforesaid construction of the "pyramid", emphasis is shifting downwards both organizationally and in respect of powers, which no doubt enhances democratism. At the same time the development of minute local differences of regulations may jeopardize

uniform legality. The interests of the state might be impaired if "local sovereignty" takes a different stand. If the thesis holds that homogeneous national states are not unnecessary—in the sense of both international and domestic politics—even in the second half of our century, it is quite clear, then, that adequate political and legal safeguards must be provided also in such cases. And the political checks and balances may be in this case a clear-cut and uniform policy of the political organs to maintain the uniform state (and its homogeneous organization). Legal checks and balances may consist in the incorporation of institutions which provide efficient protection to uniform constitutionality and legality, to the uniform principles of socialist law and economy.

#### **4. Representative Organs and their "Delegatory" Organs—The Real Sphere of Authority**

Starting from the foregoing conclusions, we must—first and foremost—state quite clearly that the socialist constitutions of our days unmistakably contain statements which define the representative organs, or a national organ from among them, as the *primary* embodiments of the people's sovereignty. These two formulations are found together in many cases, with no marked distinction between them. One has the impression that the definition of all representative organs as the carriers of all rights originating in sovereignty is intended to stress the popular character of the socialist state—while the constitutions do not unmistakably reflect the real pattern of power with this declaration. The statement, however, that the representative organ of highest level has "absolute" sovereignty, i.e. sovereignty of the highest grade, has another meaning. In this case one of the pillars of the hierarchy of the state organs is involved, the organ which determines all other jurisdictions (based on the *Kompetenz-Kompetenz* theorem long established in German legal literature, meaning that this organ has the competence to define the outlines of competences).

The distinction between these two is supported also by the fact that there is no socialist constitution today which determines the universal, common powers of the representative organs. Still, even constitutions—like the Hungarian—which declare that the general competence of the supreme representative organs consists in the exercise of sovereign rights enumerate the detailed, defined and exclusive powers of such organs.

According to Article 108 of the 1977 Soviet Constitution the Supreme Soviet of the USSR is empowered to deal with all matters within the jurisdiction of the Union of Soviet Socialist Republics, as defined by the Constitution.



The exclusive spheres of power of the Supreme Soviet are the following: the adoption of the Constitution of the USSR, admission of new Republics into the Union, the approval of the foundation of new Autonomous Regions and Republics, the approval of the Soviet Union's economic and social development plans and the state budget as well as the report on the implementation of the latter two, and the foundation of organs which have to render account to the Supreme Soviet. Article 137 defines the exclusive spheres of authority of the Supreme Soviets of the Union Republics as follows: "Adoption and amendment of the Constitution of a Union Republic; endorsement of state plans for economic and social development, of the Republic's budget, and of reports on their fulfilment; and the formation of bodies accountable to the Supreme Soviet of the Union Republic are the exclusive prerogative of that Supreme Soviet."

The Hungarian Constitution of 1949 laid down the following definite powers of the Parliament: legislation, the definition of the state budget, the approval of the national economic plan, the election of the Presidential Council of the People's Republic and of the Council of Ministers, the setting up and abolition ministries, the determination of the function of the ministries, decisions in issues of declaring war and making peace, the exercise of amnesty (Article 10, Paragraph /3/ prior to the amendment of 1972); and, in various provisions of the Constitution: regulating the manner of calling to account the members of the government; the determination of the organization of the judiciary; regulating the election of judges of county courts and district courts; regulating the election and recall of members of Parliament; electing the officers of Parliament; the delegation of committees; the dissolution of parliament prior to the expiration of its term, and the prolongation of its mandate; the recall of the Presidential Council of the People's Republic, or of its members; the election of the President and the judges of the Supreme Court, and of the Procurator General.

The Czechoslovak Constitution of 1968 described the most important powers of the federal assembly in Chapter 3. Rights of guidance and rights of legislation were discussed separately. The former comprise the adoption of the Constitution, the amendment of the Constitution, the enactment of laws; the supervision of their implementation; the discussion of the principles of foreign and domestic policy; the approval of the federal medium-range plan and of the budget; the supervision of their implementation; the approval of the appropriation accounts; the election of the President of the Republic; the discussion of the government programme; supervising the activity of the government and its members; discussing the question of confidence; the election and recall of members of the constitution court; setting up federal ministries and commissions; setting

up controlling organs; the decision in the matter of declaring war; the ratification of international treaties; the annulment of provisions contrary to law. The exclusive legislative powers comprise the framing of statutes in the following matters: family law, civil law, civil procedure, private international law, rules of international procedure, criminal law, criminal procedure, the enforcement of imprisonment penalties, detention, administrative procedures, institutions of higher education, documents for travelling abroad, licences for carrying weapons and keeping munition, geodesy and cartography. Yet emphasis is laid here not only on legislative powers, but also on other forms of direction: on the creation of various state organs, and on their responsibility to the Federal Assembly. The various forms of direction and influencing are discussed at relative length by the Constitution. (The attempt in the same chapter, namely that the Czech and the Slovak National Councils, i.e. the supreme organs of the two Republics, should establish closer contacts with the national committees, is within the scope of our subject-matter. In Article 108, the Constitution therefore emphasizes their duty to deal with the suggestions of the national committees, to discuss their activity, and to take measures concerning their development.

The Rumanian Constitution of 1965 took a course similar to that of Czechoslovakia: it declared the monopoly of legislation, but did not touch the concrete matters of legislation (apart from a brief enumeration regarding the electoral system, the framing of the organizational and functional rules of the courts, the procurators' organization and the people's councils—although the Constitution does not declare that these questions can only be regulated in the form of laws). On the other hand, this constitution enumerates in detail the organs to be elected—or recalled—by the Grand National Assembly (the President of the Republic, the Council of State, the Council of Ministers, the Supreme Court, the Procurator-General), and those to be supervised (the President of the Republic, the Council of State, the Council of Ministers, the ministries, the other central organs of administration, the procurators' organization, the people's councils and the Supreme Court—the latter in respect of its directive rulings). The same Article declares that the Grand National Assembly shall exercise general supervision over the application of the Constitution, and shall have the exclusive right to decide on the constitutionality of laws. The Assembly's general powers of direction comprise the framing of the Constitution (the amendment of the Constitution), the approval of the integrated national socio-economic development plan, the state budget and the appropriation accounts, the ratification of international treaties, the determination of the general course of foreign policy. The declaration of the state of emergency, the ordering of partial or total

mobilization, the proclamation of the state of war fall within the special powers of the Grand Assembly.

The Constitution of the GDR enumerates the powers of the supreme organ of popular representation (the People's Chamber) within the most limited compass. Accordingly, this organ passes decisions on the fundamental issues of state policy at its plenary sessions (Article 48, Paragraph /1/), and defines the targets of development of the German Democratic Republic through statutes and decisions (Article 49, Paragraph /1/). The Constitution speaks briefly about the creation of subordinate organs: Article 50 declares that "The People's Chamber shall elect the president and the members of the Council of State, the president and the members of the council of ministers, the president of the National Council of Defence, the president of the Supreme Court, its judges, and the Procurator-General. The People's Chamber may recall them at any time."

The Yugoslav Federal Constitution is altogether different and more complete in its structure in this respect. It not only declares that the supreme representative organ, the Federal Skupshtina, is "a social self-administrative organ and the supreme organ of power", but also enumerates in Article 281 the detailed rules of jurisdiction. From among them, I should like to point out the following:

(a) Federal legislation; the aforesaid Article of the Constitution enumerates in detail the matters of federal legislation also in respect of codification, of constituent and general legislation. The rights and powers of legislation are fully defined because the social and living conditions to be regulated by them are enumerated exhaustively.

(b) This Article of the Constitution lays down the most important economic and other guiding principles—approved by the supreme representative organ—which affect the entire State and the society alike: the social plan, the federal budget and appropriation accounts, the fundamentals of home and foreign policy etc.

(c) It enumerates the organs and functionaries to be elected, appointed, or discharged by the Federal Chamber of Deputies (the President of the Republic, the president and the members of the Federal Executive Council, the president and the judges of the Constitution Court and the Federal Court of Yugoslavia, the federal under-secretaries of state, the federal secretaries, etc.); it enumerates the forms of supervision over subordinate organs (political supervision over the work of the Federal Executive Council and the federal administrative organs). With this form of constitutional conception, however, much less emphasis is placed—owing to tendencies of decentralization—on the controlling of organs created in this way and on their responsibility to the Federal Chamber of Deputies. The fact itself that the protection of constitutionality was placed on the highest level outside the representative organs shows that

what was consolidated here was legislation and not the above-mentioned "organizational" powers of the supreme organ of popular representation.

The powers of Parliament were regulated anew after the amendment of the Hungarian Constitution in 1972. The following came within the exclusive jurisdiction of the Parliament, in addition to the instances enumerated before: the definition of state property; the definition of the exclusive sphere of economic activity of the State; the definition of cases to be referred to the jurisdiction of the Presidential Council of the People's Republic; regulating the legal status and the way of calling to account members of the Council of Ministers and under-secretaries of state; laying down detailed rules for the councils; regulating the manner of recalling judges, of electing professional judges by the Presidential Council of the People's Republic; laying down the rules relating to courts and the procurators' organization; laying down the rules regarding the basic rights and duties of the citizens.

Thus, organizational and legislative powers are mixed here. A considerable change was carried through especially in the rights of regulating the social relations of the country.

Therefore, two tendencies can be distinguished in the shaping of the model of the organs at the head of popular representation in the socialist constitutions of our days: (a) the supreme organ is placed at the head of the organizational hierarchy, a system of increased *control* and *responsibility* is developed; this organ "changes over", also technically, to the function of direction and control, the number of legislative acts remains low, and even their scope is not regulated (neither on the constitutional, nor on other statutory levels); (b) legislation remains in the centre of the function of the supreme representative organ, and the latter regards legislation as the most important part of its directing activity. In this latter case rights connected with the election of the various central and other organs are mere symbols of sovereign rights, since these organs are directed almost solely through laws, and their particular jurisdictions are defined by high level statutes. The first model—may be termed roughly, and without expressing its character accurately—as an *organizational-directive* type, while the second is of the *legislative* type.

Needless to say, neither type can be found in its "pure" form; one of the tendencies may be weaker or stronger. These two tendencies represent two notions each of which shows a given sector of the supreme embodiment and exercise of the people's sovereignty, shifting the emphasis in one or the other direction. The constitutions reflect these two tendencies in a fairly clear way, even if the supreme representative organ does not make use of all its powers, the trend is manifest in these defined jurisdictions. These constitutional provisions are completed by the scientific com-

mentaries on the constitutions. Some of these deserve a closer examination.

Four years after framing the Constitution of 1960 in Czechoslovakia, a number of party resolutions were issued on the development of the representative organs. The comments on them contain most clearly formulated tendencies which are highly important from our point of view. "In the conception of the constitution," writes one of the summarizing articles, "the National Assembly has really become the supreme organ of the state. It is from this body: the supreme state representative of the working people, that the existence and powers of the other supreme organs *are derived*, and their activities depend on this body; the President of the Republic, the government and the members of the government are responsible to it for their activities. The Supreme Court and the Procurator-General are responsible for socialist legality to the National Assembly."<sup>60</sup> It is characteristic of the same commentary that it barely touches upon the legislative function (by mentioning the good preparation of statutes as the precondition of their stability) and regards the extension of the controlling function (the right of interpellation, the contacts with the organs of the people's control, the constitutionality committee) and that of the main spheres of authority as the two principal trends of development of the National Assembly. As regards the latter, it states that their most important part is legislation, but that "the activity of the National Assembly must not be aimed predominantly at legislation."<sup>61</sup> I do not think that the model of a directive leading organ which does legislative work only within its directing function, in a somewhat secondary manner could be formulated more clearly than that. If, however, legislation as a method is given a secondary role within the supreme representative organ, the demand for the creation of statutes will certainly break through somewhere, and then it shall be satisfied on the level of lower organs, or, perhaps, in the sphere of non-direct representative organs.

Even the Yugoslav constitutional concept an opposite of the above-said solution does not treat the supreme representative organ as being merely one of legislative nature. In his preface written to the Constitution of 1963, Jovan Djordjević characterizes the Federal Chamber of Deputies as "the principal representative of the Federation's rights and duties", He gives a summary definition of the functions of the Chamber saying that it is "a legislative-executive organ".<sup>62</sup> Following this definition, he enu-

<sup>60</sup> "Dokumenty dalšího rozvoje zastupitelských sborů ČSSR", (Documents on the further development of representative bodies in the Czechoslovak Socialist Republic) *Právník* 7/1964, p. 592 (Italics are mine, O. B.)

<sup>61</sup> *Ibid*, pp. 594-595.

<sup>62</sup> Constitution de la République Socialiste Fédérative de Yougoslavie (Institut de Droit Comparé - *Recueil des lois de la RSF de Yougoslavie*, Volume VII, Beograd, 1963, p. XI).

merates the legislative functions of the Chamber of Deputies—but does not mention execution, save if the exercise of political and other supervisory powers over various organs and their activities is meant by it.

These two kinds of model outline the two theoretically ideal solutions of the exercise of sovereignty on the level of the supreme representative organ. At any rate, the framers of the constitutions by these solutions strive at fully realizing the popular-representative principle in one or the other way. One can either put it on the highest level of the hierarchy, or to place it in the position of the real supreme legislator. It is quite a different question which model guarantees the greater real power; and this problem will be discussed later, all the more so, since one of the aims of these considerations is to point out more expedient solutions. Yet this expediency is rather Janus-faced, and is also affected by psychological factors.

We have now come to the point where we can give an outline of the two socialist trends of the highest representative organ (at least on the constitutional and, therefore, idealized level). Let us try to carry out the same investigation in the case of the local (i.e. non-national, non-central) representative organs.

Chapter VIII of the Soviet Constitution of 1936 deals with the local organs of state authority, with the Soviets of the Workers' Deputies active in various state-territorial units, rather laconically. The duties of the local Soviets were actually defined in two separate Articles (97 and 98): (a) they direct the activities of the administrative organs subordinate to them, protect the order of the state, ensure the observance of laws and of the citizens' rights, direct the local economic and cultural work, and prepare the local budgets; (b) they pass decisions and issue orders within the scope laid down for them by the laws of the Soviet Union and the Union Republics. Thus—if we realistically consider the functions given in this enumeration—the first part contains the directive activities (as well as the budgetary rights) and the legislative right can be found in the second one.

The Hungarian Constitution of 1949 defined the scope of activities of the local councils on a wider basis. Paragraph /1/ of the original Article 31 of the Constitution gave general authorization to the local councils "to exercise their state-power activity within the compass of constitutionally enacted statutory provisions and within the scope defined by superior organs". The Constitution listed tasks of various nature within this scope: (a) the directing functions (such as leading the economic, social and cultural activities, the direction and supervision of subordinate organs of state authority and administration, the direction and supervision of the work of local economic enterprises); (b) cooperation in the implementation of various tasks concerning the state as a whole (the enforcement of laws and orders of higher authorities, protecting the order of the state and

public property, protecting the rights of the working people, supporting the cooperatives of the working people); and, finally, (c) preparation of the local economic plan and budget (within the compass of the national economic plan and the state budget) and supervision over their implementation. Paragraph /3/ of the original Section 31 separately defined the right of local councils to issue decrees, declaring that they must not be contrary to the law, to law decrees, to the decrees of the council of ministers, and statutes issued by councils of higher level.

As to the next historical phase of constitution-framing, we may consider the Constitution of the Polish People's Republic. Five articles (37—41) of the Constitution dealt with the duties of the local representative organs. The most important of these is the first one: the direction of economic, social and cultural activities within the organ's own jurisdiction, and the coordination of local needs with national tasks. The next task is to satisfy the needs of the population, and to exercise social control and fight against the symptoms of bureaucracy. Following the general function of protecting public order and legality, the Constitution entrusts the people's councils with the exploration of local resources, with communal, cultural, health and sports tasks. The fifth group is the approval of the local economic plan and budget. It is characteristic of the Polish Constitution of 1952 that it *contained no provision at all on the legislative rights* of the people's councils (Article 44 mentioned the resolutions of the people's councils, but they were not regarded as norms).

Among the recent constitutions framed in the sixties, the Mongolian one of 1960 retained in essence the model of the local state-power of the 1936 Soviet Constitution, while the Czechoslovak fundamental law of 1960 enumerated in Article 89 groups of tasks which differed considerably as to form and contents, from the aforesaid model. The first group is direction and organization (in the economic, cultural, health and social fields, including the formation and the direction of pertinent institutions), the second one is the protection of the institutions of socialism (socialist property, the socialist order of society, observance of the rules of socialist coexistence, protection of the order of the state), the third group contains the enforcement of the law, of the citizens' rights and of the rights of socialist organizations. The definition of these groups of tasks is of rather general nature, just as the provision of Article 90, according to which the national committees take part in the drawing up and realization of the national economic plan. Subsequent provisions for implementation defined the jurisdiction of the national committees gradually and much more in detail. At any rate, that what characterizes the activities of the Czechoslovak national committees, is not the tasks and jurisdiction defined in the Constitution, and, following that, in the National Committees Act of 1967, but rather the general policy that appeared already in Article

87 of the Constitution. Here the national committees themselves were defined as the unified organs of state power and state administration. This, in fact, means that the unity of passing and enforcing resolutions is a fundamental principle in the local representative organs, in all their divisions.<sup>63</sup> But a standpoint developed by Pavel Peška, and accepted generally, is highly important in the Czechoslovak constitutional literature: division of labour must be realized besides the unity of passing and enforcing resolutions, and the following rights must be reserved to the representative organs as political state organs: the determination of long-range plans and of the budget, the approval of fundamental complex resolutions, and public control.<sup>64</sup> This definition is, no doubt, much more generous than the one to be found in the Constitution (although Article 94 made it possible for the national committees to issue decrees), and more or less agrees with the line of the later Act of 1967. This Act laid special emphasis on the economic functions, and not only on the customary forms of planning and financial activity, but also on the determination of the directions and ways of financing. To summarize all this: the tendency of direct disposition, of the representative organs' extensive powers to pass resolutions, is stronger in the Czechoslovak model of local representations than in the former constitutional models. (I should like to mention here—although this belongs to another field—that the new law made it possible for the national committees of towns and villages to issue ordinances; the model-ordinance for the towns was issued by the national assembly already in 1967.)

The model of people's council of the Rumanian Constitution actually remained on the earlier basis. The jurisdictions can be divided into four groups: (a) framing of general economic resolutions (economic plan and budget, appropriation accounts); (b) election and recall of executive committees, establishment of local state economic organizations, enterprises and institutes, direction and supervision of all these and of specialized administration activities; (c) supervision over the resolutions of the directly subordinated councils; (d) passing their own resolutions (regulatory, i.e. normative resolutions).

It seems from this constitutional model as if the directing activity were the principal function of the local representative organs and they were less concerned with legislation. We must keep in mind, however, that following the national Party Conference of December 1967 considerable changes took place in Rumania as compared to the constitutional model,

<sup>63</sup> (Bihari, O.) Бихари, Отто: "Проблемы развития советов", (Problems of the development of councils), *Acta Iuridica Academiae Scientiarum Hungaricae*, Tomus XI, Fasc. 3-4, pp. 309-310.

<sup>64</sup> Peška, P.: "Úvahy k perspektivní konstrukci zastupitelských sborů," (Reflections on the developing of representative bodies) *Acta Universitatis Carolinae Iuridica*, Praha No. 4/1966, p. 225.



consequently this enumeration of functions may not be regarded as valid even in respect of the directing activities. Since, on the county level, economic committees were set up under the immediate control of the county party committees for attending to tasks of coordination, the role of the people's councils as directing and coordinating organs was pushed into the background. On the other hand, the prohibition regarding the duplication of administrative-organizational functions had the consequence that the direction of the ideological and cultural activities was completely transferred to the hands of the regional party organs. Thus, also this function of the people's councils was eliminated. After such a profound change of the model the practical features of the new administration become clear only later on.

The model of the Yugoslav local-village-organs is also new. The community statutes summarize the rights and duties not only for the representative organs acting in this field, but also for the village proper as a self-management, socio-political unit, and further rights and duties devolve from the latter upon the representative bodies of villages. As a consequence of all this, the legal and social relations of local representative organs are determined partly by the constitution (constitutions) and partly by the regulations of the villages concerned.

The Constitution defines the rights and duties of the representative bodies in general terms, while the rights of the community of the citizens in the given community, are laid down in Article 116 of the Constitution in such a way that they are exercised not only by the representative body of the community, but also by other organs of self-management. The Constitution of the Serbian Socialist Republic defines the rights and duties of the representative bodies of communities on a wider basis. Some of these are connected with normative and long-range resolutions. The powers of the representative organs are very clearly separated in this constitution from the administrative powers in both directions.

We must also study the local organizational model outlined in the Constitution of the German Democratic Republic. Articles 81 and 82 of the Constitution speak of the tasks of local popular-representative organs in rather general terms. Paragraph /2/ of Article 81 states that "the local popular representations within their jurisdiction decide on all issues concerning their territory and its citizens on the basis of the law". These tasks are not discussed more in detail; it is rather the purpose of the local popular representations' activity that is defined more clearly: the protection of socialist property; the incessant improvement of the citizens' working and living conditions; the improvement of the social and cultural conditions of the citizens and their communities; the enhancement of the citizens socialist state and legal consciousness; the protection of public order; the consolidation of socialist legality; the safeguarding the citizens'

rights. The Constitution granted to the local popular representations the right to pass resolutions obligatory for their own organs and institutions, the popular representations and communities active in their territory, and the citizens living there. The principal outline of the tasks of the local popular representations does not appear from the Constitution; it only mentions that the tasks and powers of the local popular-representative organs are regulated by law.

The system laid down in 1971–72 for the Hungarian councils differs from the former one considerably; if only because of the fact that the “constitutional model” is to be found primarily not in the Constitution itself. Before the amendment of the Constitution in 1972, the Parliament enacted an amendment to the Constitution—Act I of 1971—in which the administrative, supervisory and legislative functions of the councils were regulated anew on a wide basis. In the subsequent amendment of the Constitution, rules were declared whose nature was more skeleton-like than before. Act I of 1971 declared that the local and regional councils and their organs are popular-representative, self-governing and administrative organs (this, however, meant the definition not only of the representative bodies, but also that of their apparatus). Paragraph /1/ of Section 43 of the 1972 Constitution amendment declared, that the councils shall, among others, “draw up their plans and prepare their budget—based on the national economic plan and the state budget—direct and supervise the fulfilment of the plans, the spending of the budget, and shall manage their financial means independently”. Paragraph /1/ of Article 44 declared that “the councils shall elect an executive committee, shall form committees, set up organs of specialized administration, may found enterprises, institutions” and thereby defined the relations of internal council hierarchy. Paragraph /2/ of Article 43 lays down the councils’ rights of framing decrees and passing resolutions (this is provided for in Section 5 and Paragraph /1/ of Section 34 of Act I of 1971 in a much more clear-cut way than in the Constitution).

In Chapter 6 of the Polish Constitution of 1976, the tasks of the National Councils are approached from several aspects: (a) they [the Councils] express the will of the working people; (b) they strengthen the ties between state power and the working people; (c) in their own fields they control socio-economic and cultural development, and they exert influence on the units of state administration and the economy; (d) they provide for the fulfilment of the demands of the population and the safeguarding of its interests; (e) they take measures for maintaining public order and the observance of legality; (f) in the interest of development, they make use of local resources; (g) they determine the socio-economic plan and the budget of the given territory. In the case of this solution, the questions relating to legislation have been pushed to the background.

Articles 146–148 of the Soviet Constitution of 1977 present a more detailed picture of the sphere of tasks of the Soviets of People's Deputies. Primarily, the followings are their tasks: the solution of local problems, the implementation of the resolutions of superior state organs, the direction of Soviets of lower levels and the participation in debates on issues related to the Union Republics. Besides this, the Constitution assigns them the task of coping with the specific problems of complex economic and social development. Article 148 also deals with the resolutions of local Soviets as well as the fields covered by them.

We have now surveyed the main regulation methods of the powers and functions of central organs (on Federal and Union Republic, or state level) and of local representative organs. We have found in both fields the intention of exercising rights arising from the people's sovereignty—of course to a different extent and in a different sense (depending on the ideal image of a state centralized, or built up from below). One of the principal forms of exercising sovereign powers is the regular direction and supervision of subordinate organs. The other one is the general definition through legislative methods (or by means of long-range orders) of the activities of state and social organs. I should like to add that most constitutions, and especially the comments on them, emphasized in the case of both models the unity and close relation of the legislative and executive powers. But this has hardly any realistic basis on the constitutional, or even on the statutory level. Where the constitution—as in Czechoslovakia—tried to grant executive powers to certain divisions of the popular-representative organs, subsequent legislation discarded this solution. So the popular-representative organs were left with a function but without executive powers.

At this point one must scrutinize the very *reality of rights* of representative organs defined in general by the constitutions. The reality of exercising power may depend on many factors. The originally given problem in our case is the efficiency of collective decisions, the relationship between expertise and democracy, the technique of modern legislation, etc. Their majority comes within the domain of general or political sociology, and is interwoven with political science. These questions may all be reduced essentially to the problem of *organization and democratism*, that may be transformed in the theory of constitutional law into the sovereign rights of the representative organs. We must agree with Kálmán Kulcsár when he writes: "The possible tensions between organization and democratism may not be narrowed down to the mere relationship of the organization and the representative body. What comes to the fore here is first of all the relationship of the representative body and society . . ." And then: "The relationship between representative and administrative organs may be considered from two aspects: (a) To what extent

are the decisions reached by representative organs realized in the work of the administrative organs? . . . (b) How far, and by what means, are the decisions of the representative organs affected by the administrative organization; to what extent is it able to influence them according to its own, or the general . . . state interests?"<sup>65</sup> Several questions present themselves to us because the modern socialist state, facing social, economic, cultural and other tasks is bound to build up a large *expert apparatus*.

Simultaneously, it has to face the permanent problem of curtailing the bureaucratic "*inclinations*" of this apparatus. It is also a problem how to give popular legitimation to state power, i.e. how to ensure an adequate influence of the population in reaching true decisions, and how to make aware the socialist state organs that in their activities the contacts with the working people give them a special privilege.

The fact that these problems come forth not only today, but did so before—and not merely as the result of some "fashion"—is proved by the manifold attempts, not always devoid of contradiction, which have characterized socialist state-building for half a century now. The organizational questions connected with the above set of problems appear also on the constitutional level. Some of them are worth considering, because of problems related to them.

We have seen how clear a Soviet organization—built up from below—has been created by the Soviet-Russian Constitution of 1918, in which the priority of the All-Russian Soviet Congress was expressed also by the constitutional order for clarifying state sovereignty. But the Congress was not regarded by the framers of the Constitution as a body sitting often and for a long time. It had difficulties of action also because of the large and changing membership. The idea was therefore raised, here for the first time, to reconcile the legitimate activity of this representative organ expressing sovereignty with the necessity that such an organ must master the problems entrusted to it with the aid of some organizational solution. The requirement behind this idea may have been that if the Soviet Congress—instituted through indirect election—should not be able, on account of its structure, to exercise the sovereign rights continuously, these rights must be taken over by an organ instituted *by right of* the Congress. When the Constitution was framed, it was therefore decided, without any debate, to create an organ in the form of the All-Russian Central Executive Committee which was elected by the Congress from among its members, and which exercised the same rights as the Congress—except for two rights belonging to the exclusive powers of the Congress:

<sup>65</sup> Kulcsár, K.: *Bevezetés a szociológiába* (Introduction to sociology), Budapest, 1966, pp. 131–132.

drawing up, completing and amending the basic principles of the Constitution, and the ratification of peace treaties. According to Article 30: "During recesses of the Congress, the supreme state power of the Republic shall be exercised by the Soviet Central Executive Committee." According to Article 28 of the Constitution, the membership of the Central Executive Committee was 200. Thus, this organ became an agency with delegated powers, but at the same time also a legislative, directing, and supervisory body. (It is interesting to note that while the framers of the Constitution tried from the very beginning to eliminate the contradiction between large membership and the effectiveness of the legislation, "the actual preponderance in matters of domestic and foreign policy was shifted to the Council of the People's Commissars, not without internal conflicts" between the Central Executive Committee and the Council of the People's Commissars.<sup>66</sup> Gurvitch explained this by saying that even this relatively smaller substituting organ was a "too big and too heavy vessel". The daily tasks of legislation were in the end taken over by the Council of People's Commissars, and the Central Executive Committee exercised supervision over this activity. It has to be mentioned that the subdelegation of legislation was not unknown in the practice of the pre-revolutionary Russian state, and this fact may have rendered the above course more acceptable in the years of Soviet power.

A further substituting organization had to be set up later on: it was the Presidium of the Central Executive Committee. Its official function comprised the conducting of the sessions of the Committee, preparatory work for the sessions, the working out of draft decrees, the supervision over the implementation of orders, directive work in central and local organs, etc. These three bodies were included in the Constitution of 1924 in such a way that the Soviet Congress of the Soviet Union and the Central Executive Committee were regarded (the latter between congresses) as the supreme power organs of the Soviet Union, while the Presidium was regarded as the supreme legislative, executive and decision-making power organ. This way, a complete series of substituting organs was created.

The Constitution of 1936 abolished this three-level scale and instituted—in addition to the supreme organ of the Union and the Republics, the Supreme Soviet—another organ, the Presidium of the Supreme Soviet, which, however, had no general delegated powers according to the Constitution. This absence of deputizing powers, however, did not mean that this way should not have been open to the Presidium in reality. Although Article 32 declared that the monopoly of legislation belonged to the Supreme Soviet, Paragraph /b/ of Article 49 granted the Presidium of the

<sup>66</sup> Gurvitch: op. cit. p. 67.

All-Union Supreme Soviet the right of issuing *ukases*. Without and exhaustive enumeration of legislative matters, the legislative monopoly is but a formal statement; this is indicated, on the one hand, by the often cited Article 31 of the Constitution; on the other hand, practice itself has shown that the subject of *ukases* occasionally coincides with the subject of laws enacted earlier or later. Speaking of the powers of the Presidium, Article 49 in fact mentioned deputizing powers in two cases: between the sessions of the Supreme Soviet, the Presidium may dismiss and appoint People's Commissars upon recommendation by the Council of People's Commissars (the subsequent approval of the Supreme Soviet is required); and in case of military attack, or if such obligation follows from a pact on mutual defence, the Presidium may declare the state of war. In addition to its own powers, the Presidium finally became in practice an organ acting on behalf of the Supreme Soviet, by its commission. In this context, Mishin aims at bridging the difference between the constitution and practice with the following circumscription: "The Presidium of the Supreme Soviet of the Soviet Union is the particular supreme organ of state power which, on the one hand, realizes the powers delegated to it by the Supreme Soviet of the Soviet Union . . ." <sup>67</sup>; and he says at the same time in connection with the powers of the Presidium: "The Presidium regulates the Soviet federal state's most important issues of constitutional law through normative *ukases* which it issues on the basis of the constitution and other laws of the Soviet Union." <sup>68</sup> The substitution of the supreme Soviet organs of state power took shape in this way not only for the Union, but also for the Union and Autonomous Republics.

Article 119 of the Constitution of 1977 speaks of the Presidium as follows: "The Supreme Soviet of the USSR, at a joint sitting of its chambers, shall elect a Presidium of the Supreme Soviet of the USSR, which shall be a standing body of the Supreme Soviet of the USSR, accountable to it for all its work and exercising the functions of the highest body of state authority of the USSR between sessions of the Supreme Soviet, within the limits prescribed by the Constitution." As the already quoted Article 108 (Paragraph /3/) defines the exclusive spheres of authority of the Supreme Soviet rather narrowly, the substituting sphere of authority seems to be rather wide. Decrees that will be issued later will surely make this general regulation more exact. Nevertheless, Article 122 of the Constitution mentions four cases in which the Presidium is obliged to lay the decision before the next session of the Supreme Soviet for subsequent confirmation: (a) law amendments; (b) changes in the bound-

<sup>67</sup> (Lepeshkin, A. I.—Kim, A. I.—Mishin, N. G.—Romanov, P. I.) Лепешкин, А. И.—Ким, А. И.—Мишин, Н. Г.—Романов, П. И.: *Курс советского государственного права* (Textbook of Soviet Public Law), Moscow, 1962, p. 431.

<sup>68</sup> *Ibid*, p. 436.

aries between Union Republics; (c) creation or abolition of ministries or state committees of the USSR on the recommendation of the Council of Ministers of the USSR; (d) when individual members of the Council of Ministers of the USSR are relieved of their responsibilities and new persons are appointed to the Council of Ministers on the recommendation of the Chairman of the Council of Ministers of the USSR. Thus, the Presidium has gained a wide sphere of authority in the field of law-making.

This model has both advantages and disadvantages. It is certainly an advantage that it takes into account the problem of a socialist country: the *multitude of fields to be regulated* and the connected difficulties in framing norms. On the other hand, the presidium-type organs perform the role of a constitutional substitute in states of emergency, moreover, these functions are taken over by an organ which is not alien to the representative body, but is formed from its own ranks, while the newly formed organ itself remains also a representative organ. A considerable disadvantage of this system is that the *actual* functioning might easily pass into the hands of the substituting organ without their having the same guarantees for the legitimation of statutes as in the case of the primary representative body: regular consultation and contacts with the constituents, the regional, constituency activities of the representatives and deputies, the preliminary supervision of the representative bodies over the drafting of bills, etc.

The problem of "substitution" is regulated by the constitutions of the various socialist countries in rather differing ways. The socialist constitutional models of the Far East are characteristic in this respect. Article 24 of the Chinese Constitution of 1978 declares that "the Permanent Committee of the National People's Assembly is the permanent organ of the National People's Assembly". Its deputizing powers are accordingly wide, although not general and not without limits. A very similar system was introduced by the Vietnamese Constitution of 1960 through the Permanent Committee of the National Assembly which "is the permanent organ of the National Assembly elected by it" (Article 51). Article 85 of the Korean Constitution of 1972 declares that the Presidium of the Supreme People's Assembly is the "standing organ of the Supreme People's Assembly" and Article 33 of the Mongolian Constitution states the same about the presidium of the Great People's Hural.

The solution is not so clear-cut in the European socialist countries. One of the reasons for this is that in some of these countries the earlier form of the institution of the president was not replaced by a collective head-of-state organ (in Czechoslovakia, for example; the President's institution was introduced in Yugoslavia and Rumania only later). On the other hand, due to the aforesaid difficulties, it was attempted after some

time to curtail the powers of the substituting organs in order to maintain the rights of the popular-representative bodies. There are still existing constitutions which have maintained the general jurisdiction of the substituting organs.

In order not to separate the various solutions on the basis of their form, we must conclude that different possibilities were found also in countries where the one-man presidential power prevails. In Czechoslovakia, for example, the president has no substituting powers whatsoever, while the Presidium of the Federal Assembly has practically unlimited delegated powers. There are only a few restrictions: the Presidium may not pass decisions on the election of the President of the Republic and on the framing of the Constitution, even if the session of the National Assembly becomes impossible; it may act as a substitute in the matter of the federal budget, the declaration of war and a motion of non-confidence against the government only in exceptional cases. The measures of the Presidium taken on the basis of the powers of the Federal Assembly must be approved by the latter in its next session, or else they cease to be in force (Article 58 of the Constitution). The Presidium may issue law decrees in matters of legislation. (Quite interestingly, these must be signed by the President of the Republic, the president of the Federal Assembly, and the prime minister, thereby guaranteeing the supervision of the issuance of law decrees.) Thus, the Czechoslovak system is an example of the parallel functioning of the presidential and substituting organ.

The Yugoslav Constitution of 1974 has set up a dual presidential organization: the Presidium of the Yugoslav Federal Socialist Republic, and the President of the Republic. But, in fact, neither has general delegate powers. In state of war, or immediate danger of war, the Presidium may issue law decrees on its own initiative or upon the suggestion of the Federal Executive Council. Such law decrees must be submitted for approval to the Federal Chamber of representatives as soon as there is a possibility for holding a session. The President of the Republic, however, has the right to issue law decrees in state of war, or immediate danger of war, if the Presidium cannot meet.

So the institution of substitution is provided for in the Yugoslav Constitution of 1974 only in states of emergency. This, though, cannot be avoided even where there is no substituting organ established in the Constitution.

The original text of the Polish Constitution more or less resembled the Soviet solution. Deputizing powers appeared to be unlimited first of all in the field of legislation regarding at least its subject-matters. (According to Paragraph /1/ of Article 26 of the Constitution: "In the intervals between the sessions of the Sejm, the Council of State may issue decrees having the force of law. The Council of State submits its decrees to the next session



of the Sejm for approval.") Concerning law decrees, however, a radical change took place already before 1956. Based on a resolution of the Sejm, the Council of State was no longer authorized to issue law decrees in its capacity of substituting the Sejm. Thus the monopoly of legislation became reality as a consequence of this resolution. The Council of State retained as a result its character of a collective head of state; eight of the eleven paragraphs in Article 25 of the Constitution originally referred to this (even if the compulsory interpretation of the law defined in Paragraph 3 is not regarded as a presidential function). It is interesting, however, that the text of the quoted Article 26 (Paragraph /1/) was retained by the amendment of the 1976 Constitution (Article 31, Paragraph /1/).

The Albanian and Bulgarian Constitutions aimed at regulating this question similarly to the provisions on the substituting organs in the Soviet Constitution of 1936. The Hungarian Constitution at the same time went beyond the Soviet model because it formally granted general delegating powers to the Presidential Council of the People's Republic. "If the Parliament is not sitting, the powers of the Parliament shall be exercised by the Presidential Council of the People's Republic; but it may not change the Constitution" says Paragraph /5/ of Article 30 of the Constitution, and does not order even subsequent approval of law decrees by the Parliament, it only orders their presentation. (But, apart from this, the amendment of the Constitution of 1972 vested the Parliament with quite a number of exclusive powers, declaring in most cases that in given issues general norms may be issued only in the form of an Act of Parliament. The right of legislation was furthermore exclusively reserved for the Parliament.)

The 1968 Constitution of the German Democratic Republic, and Article 66 of the Constitution amended in 1974, changed the powers of the Council of State considerably. The earlier wide powers were replaced by other ones which the Council of State could exercise only in accordance with the Constitution, and on the basis of the laws and resolutions of the People's Chamber.

The most interesting and unequivocal solution was chosen by the Rumanian Constitution: although it did not grant general powers of substitution to the Council of State, it defined the powers of the Council in Article 64 on an extremely wide basis for the periods between the sessions of the Grand National Assembly. Most of these powers are delegatory powers. They include the framing of law-decrees (they must be approved by the Grand National Assembly at its next session; the Council of State may approve the unified national socio-economic development plan, the budget and the appropriation accounts only if the Grand National Assembly cannot sit because of extraordinary circumstances), the appointment and discharge of the Council of Ministers, of the Supreme Court (in case of extraordinary circumstances); the appointment and

discharge of the members of the Council of Ministers, of the President and members of the Supreme Court; the exercise of amnesty; the supervision over the application of the laws and resolutions of the Grand National Assembly, the supervision of the Council of Ministers, of the ministries, of the other central organs of administration, of the procurators' organization; hearing the report of the Supreme Court, supervision over its directive resolutions; the supervision of the resolutions of the people's councils; the proclamation of partial or general mobilization and of the state of war in case of emergency. All this means that the Council of State may act in its delegated authority in eight of the 23 spheres enumerated as belonging to the competence of the Grand National Assembly in Article 43 of the Constitution. From 1974 on the Rumanian council-of-state system must be studied together with the institution of President; the latter, too, has a few powers substituting the plenum of the Grand National Assembly (points 4 and 13 of Article 69<sup>5</sup>).

The system of "substituting" organs calls our attention to two ways of solution. First, it is undeniable that attempts have been made in the socialist countries to find an organ which could provide a constitutional solution to the effect that an institution in close organizational connection with the representative body be acting at the head of the state organization under the circumstances of a *state of emergency*. Thus the demand is a maximum of legitimation, a small degree of subdelegation, and a more agile yet collective body. This, however, does not affect our subject too much. The other important question is this: is there any need, and to what extent, for a substitutive organ in case of ordinary legislation, in case of the usual activities of state authority; and if there is, what powers should be vested in it?

It would seem that in the socialist countries this question presents itself together with the other problem whether deputies, who are *theoretically permanently in session* and whose time is thus fully occupied (i.e. they are actually *professional politicians*), should take part in the supreme representative bodies, or that the deputies should not be professional politicians, but continue to work in their respective jobs, and so, legislative bodies should be convened relatively rarely. If the latter solution is chosen—and this is usually the case in most socialist countries—the necessity for a substituting body with wide powers can hardly be avoided. Otherwise the representative bodies would be faced with such a great number of tasks that they could be tackled only formally, if unaided. But, even so, the legitimation of delegatory bodies would not go beyond such cases of necessity. This standpoint is reflected also in the amendment of the Hungarian Constitution enacted in 1972.

Actually, there are two possibilities here: (a) the enumeration of the powers of the supreme state-authority and representative body should

define the *exclusive rights* and *specified subjects of legislation* in which no substituting organ has the right to decide; or (b) the rights of the substituting organ should be defined by an exhaustive enumeration to prevent it this way from taking over substantial activities from the representative body which exercises sovereignty in principle. Either regulation requires a careful framing of the Constitution.

Yet all this is not enough for answering all the questions. The circumstance itself that organs (e.g. of state administration) of lower level may frame statutes raises the question whether the authorization given for this purpose is not only formal, whether "real" legislation does not shift to this level frequently, and the making of real norms is not taken over by lower organs for technical reasons. However, I shall discuss this in more detail in Chapter VI as well as the question of "substitution" in local representative bodies.

The questions we have discussed show at any rate that the priority of the representative bodies is burdened with many problems in practice, even if it is treated as a basic principle. Undoubtedly, it is hardly possible to conceive the building up of a socialist state organization lastingly without this priority but the forms of solution applied so far reflect already in the constitutions the collision between the up-to-date state organization and the original and traditional forms of representation. Obviously, attempts are being made at bridging this gap mainly through the stabilization of the substituting organs. However, so far it has not been possible to establish the adequate equilibrium between the representative system and effective administration, especially in the case of the supreme organization. The new attempts at framing constitutions aim at finding solution to this problem.

### **5. The Relations of the Constituents and the Representative Bodies**

In the foregoing I have mentioned several times the *popular legitimation* of the activities of the various state organs under the circumstances of a socialism. The representative bodies are in the centre of this problem in our case because every socialist constitution regards the representative system as the political basis of state power, i.e. the working people exercises its power through elected and responsible deputies. I might say therefore that the priority of the representative bodies is justified by the very fact that the *popular character* of power, its *authorization* by the people, is expressed most directly in this way. This authorization is delegated from the representative bodies to the substituting organs, and then to all other organs which are formed (elected, appointed, etc.) by the former directly or indirectly.

Yet it was altogether alien to the socialist theory of constitutional law to regard the fact of a single election as adequate legitimation for the entire duration of the representative bodies' activity. In May 1917, Lenin stated that for *socialists* the right of recalling at any time was the minimum of democratism. From this, we must form the primary standpoint that the authorization of the representative bodies emerges fundamentally in the elections resting on the principles of socialist democracy, and that, on the other hand, this must be "renewed" every day by the permanent contact of the representative bodies with the population, with their constituents through discharging commissions of public interest, through reports, and through the work of the representatives and deputies in the given region. And, if necessary, an ultimate consequence must also be drawn by exercising the right to recall. It is the *limitative form of a 'tied' (imperative) mandate* that is realized in socialist countries through all this, and this offers ample opportunity for establishing and consolidating contacts between the representative bodies and the working population.<sup>69</sup>

In the socialist countries, the contacts between the constituents and their deputies starts with the nominations preceding the election. It is actually revealed in these nominations what social groups would like to have certain persons running as candidates, but it is also revealed in most cases, what tasks they wish to entrust to their candidates. Nominations must therefore be regarded as the organic preliminaries of the elections. Several forms of the nominating system have developed in the socialist countries.

There are similar nominating systems in the Soviet Union, Bulgaria and Rumania (all the more so since elections take place in individual constituencies in all the three countries). The right of nomination is due in these countries to the social organs and associations of the working people; in the Soviet Union they are the communist party organizations, the trade unions, the cooperative organizations, the youth organizations and the cultural associations; in Bulgaria the communist party organizations, the Popular Federation of Bulgarian Agriculturists, the Patriotic Front, the trade unions, the cooperative organizations, the youth organizations and the cultural associations; in Rumania the communist party organizations, the trade unions, the cooperatives, the youth and women's organizations, the cultural associations, and other mass and social organizations. In the Soviet Union and Bulgaria, nomination may be made by the central and local organs of the organizations entitled to do so, as well as by the meetings of the working people; in Rumania, candidates are nominated in the constituencies at various meetings of the working population. Nominations must be made public.

<sup>69</sup>For the problems of the imperative mandate, see the author's book on *Socialist Representative Institutions*, pp. 114-135.

In Poland and in the German Democratic Republic—where there is an electoral system, based on voting for a list—lists may be drawn up by the organs vested with the right of nomination (political, professional, social organizations, other social mass organizations in the Polish People's Republic: democratic parties and mass organizations united in the National Front in the GDR). Candidates must introduce themselves at the meetings of the working population which has the right to strike off certain persons from the list.

In Czechoslovakia and Hungary the right of nomination by the organs of the People's Front was established besides the individual constituency system. In Hungary the organs of the People's Front are not allowed to make further nominations in addition to the ones made at the nominating meetings of the working population. In Czechoslovakia, the party and social organizations entitled to nomination, as well as the meetings of the population send their nominations to the Election Committee of the National Front, and the Committee forwards them. More candidates may be set up in every constituency in both countries, just as in Rumania.

In Yugoslavia election takes place on the basic level in the self-management basic organizations by forming delegations. The nominating procedure is carried out by the organizations of the Yugoslav Working People's Socialist Federation and by the trade union organizations.

Concerning the elections, the precondition of the validity of voting—in countries with individual constituencies—is that more than half of the qualified voters cast their vote. More than half of the valid votes are required for the election of a deputy. (In the Soviet Union and Rumania, only the two candidates scoring the most votes may run in a possible second round). In the GDR and Poland there is a so-called free list electoral system and the voters may carry out modifications in the lists.

What we must see in the background of the acts of nomination and election is not a mere technicality, it is rather a well-considered *authorization by the people*. In recent years it has been an increasing tendency that there should be an extensive debate at the constituents' meetings concerning the person of the candidates and the mandate and instructions to be given to them; and, on the other hand, guarantees should be given in the electoral procedure for multiple nomination, either in the form of the free list system, or the individual constituency system with several candidates.

However, in accordance with the system of the imperative mandate, the deputies are under obligation to maintain contacts with the constituents and to carry out their instructions during the whole duration of the mandate. This is expressed in Article 142 of the 1936 Constitution of the Soviet Union: "It is the duty of every deputy to report to his electors on his work and on the work of the Soviet of the Working People's Deputies,

and he is liable to be recalled at any time in the manner established by law upon decision of a majority of the electors."

Article 16 of the Czechoslovak National Committee Act of 1967 declares that the representative of the national committee shall "do active work among the working population, consult with them on the drafts of important measures which are to be discussed by the national committee . . . shall report to the constituents . . ." Even more clear-cut is the wording in point /e/ of Paragraph /1/ of Section 38 of the Hungarian Councils Act (Act I of 1971) according to which the council member shall "carry out the instructions of his constituents with due regard to public interest, shall promote the remedying of the citizens' rightful complaints". Council members are under obligation to have consulting hours and to render reports. The 1968 model regulation of the Soviet Union (resolution No. 2508-VII of April 8, 1968, of the Presidium of the Supreme Soviet) on village, suburban and housing estate Soviets in its Article 54 obliges the deputies of the Soviets to "take part in the . . . work of the Soviet, to carry out its instructions, maintain permanent contacts with their constituents, inform them on the resolutions of the Soviet and its executive committee, and endeavour to realize the instructions and motions of their constituents . . ." The deputy's (representative's, council member's) continuous activity and, at the same time, his dependence on the constituents is another, highly important factor of the legitimation of his activity.

The extreme form of dependence is the institution of the recall of the deputy. Every socialist constitution and electoral law mentions this right, but in rather different ways. As far as the supreme representative body is concerned, the nominating organs have the right to start the proceeding or pass the resolution on recalling a deputy. In Hungary, a decision on recall is reached by open vote at the constituents' meetings in the given constituency upon the initiative of the Patriotic People's Front; the Czechoslovak electoral law contains similar provisions. In the GDR, the National Front convenes the constituents' meeting which recommends the recall. The decision is made by the representative body itself. Article 3 of the Rumanian Act 67 of 1974 declares that "the deputies can be recalled if they do not fulfil their duties or if . . . they lose the confidence of their constituents". The constituents hold debates on proposals of the Socialist Unity Front and take a stance. Decision, however, is made by the Grand National Assembly and/or the People's Council (Article 102).

The success of the fully elaborated imperative mandate system is naturally connected with the demand that the representative bodies should be given legal guarantees—both on the central and on the local level—for establishing adequately wide powers. This is how *legitimation* (in the sense of authorization by the people) and *rights* (in respect of powers) interact, and consolidate or weaken each other.

## CHAPTER 6

### THE PRESENT-DAY INTERPRETATION AND FORMS OF THE UNITY OF LEGISLATIVE AND EXECUTIVE POWERS

#### 1. The Roots of the Principle of the Unity of Legislative and Executive Powers

If, in the foregoing, we have started from the premise that one of the most typical functions of the representative bodies is the expression of sovereignty in various forms within the socialist state organization, in the course of a more detailed examination we found two trends: one is the general expression of will, i.e. norm-making on the widest possible basis as the special and principal task; the other is relatively little norm-making, subdelegation, and more operative methods in the direction of the main state organization. Needless to say, there has been no fundamental difference of principle between these two tendencies: the function of legislation (norm-making) and that of direction is to be found in both. It is only in the proportions where considerable differences can be found. Yet it has never been questioned that representative bodies—owing to their structure—are especially suitable for framing normative rules. If we study the history of parliamentary organs, it appears that, after a relatively short period of dealing with the administration of justice, these organs soon regarded themselves suitable for making norms, viz., for legislation.

The first revolutionary forms of the bourgeois state show the victory of parliamentary monism. The distrust towards the judicial and administrative organs, confidence in the new parliaments representing the third estate, brought a clear-cut formation of state hierarchy.<sup>70</sup>

However, the bourgeoisie began to criticize the radical demand for parliamentary monism in proportion to the growth of its own bureaucratic apparatus which was more and more consistently used against the revolutionary masses, against the proletariat. After the French Revolution, the counterbalancing of the powers of the parliament, the creation of a "neutral power", became a conservative bourgeois demand. One of the "inventors" of the *pouvoir neutre*, Benjamin Constant, declared in

<sup>70</sup> This idea was formulated in several articles of Jean-Paul Marat who, from the first days of the revolution, held ministerial responsibility to be one of the most essential safeguards of democracy and of the principle of popular representation.

1816 that the power wanted by and acting in the name of the people will abuse this power unless it is controlled efficiently. "It is easy for this power to oppress the people as its subjects, to force them as a sovereign to express the will it imposes on them by this power."<sup>71</sup> Thus, for example, it wished to establish the ministerial responsibility not in relation to the representative body, but to the nation. The bourgeois way of thinking cast down parliament from the summit of power and, degraded it to the rank of a simple legislative machinery, often radically curtailing even these powers following the American example. This is why many bourgeois scholars at the end of the last century and in our century said that the earlier boundless authority of the parliament is "not modern", not rational, is of no use for the contemporary bourgeois state. (Hans Peters, a champion of these ideas, wrote in 1952: "The identification of the people with the parliament practised in Eastern Europe as a senseless interpretation the Rousseauist concept of democracy . . . is not of progressive nature, but feeds on the ideas of the 19th century.")<sup>72</sup>

The curtailment of the rights of representative bodies, first of all, of representative parliaments, had at last the consequence that the bureaucracy of the official apparatus gained superiority over them, and the executive became an uncontrollable and uncontrolled machinery. (This is the fact that results in the model of the so-called administrative state where real power is concentrated in the central administration.) As the prestige of parliament decreased (great efforts were made to promote this process, both from inside and outside), the appointed official machinery possessing real power got the upper hand. Marx and Lenin criticized this type of parliamentarism not only because the working strata, the workers' class first of all, were tricked out of representation in it by technicalities, but also because this organ which was so powerful at the birth of the bourgeois state was lowered to the rank of a dependant without powers, of an appointed, privileged, bureaucratic state machinery.

Marx followed the revolutionary radicals—who preceded him by almost a century—when he wanted to establish a new organization in the socialist state of transition which could extend the power of real popular representation—controllable by the people—to the whole state apparatus, i.e., where the maintenance of the political trick of restoration is no longer possible; the trick which is but a most purposefully politically involved rule of an allegedly "neutral, politically unconcerned" bureaucracy. The prototype of the socialist state, the Commune of Paris, provided a good example also in this respect. It placed an elected, controlled, and

<sup>71</sup> Constant, B.: *Cours de politique constitutionnelle*, Paris, 1861, p. 13.

<sup>72</sup> Peters, H.: *Der Kampf um den Verwaltungstaat und Verwaltung in Theorie und Wirklichkeit*, Festschrift für Wilhelm Laforet, München, 1952, p. 23.



highly active representative body in the centre of its activities entrusting it with many new functions. "The Commune", said Marx, "was to be a working, not a parliamentary, body, executive and legislative at the same time . . . Not only municipal administration, but the whole initiative hitherto exercised by the state was laid into the hands of the Commune."<sup>73</sup> Let us analyse the first sentence more thoroughly. What is the objection of Marx to the earlier organs, and what does he recommend instead of them? First and foremost, he confronts the character of a parliamentary body and that of a working one. Thus, in his opinion, parliamentary organs were no working bodies. It was the Commune which fulfilled the functions of a working body, these being the legislative and executive *work* done in the elected organs. Representative organs should therefore be legislative and executive organs. But the two sentences I have cited contain a few statements which are more important than were considered before. It is stated here, among others, that "... the police was . . . stripped of its political attributes, and turned into the responsible and at all times revocable agent of the Commune."<sup>74</sup> Accordingly, these organs were by no means abolished or deprived of their functions. But what happened in fact was that the representative organ, the Commune, was superordinated to the police with all the hierarchical consequences of this. What we must see therefore behind the expression "working body" and the function of "the executive" is that the representative body, which was to "replace" the old parliament, must become a working, executive body in the sense that it must not remain a legislative machinery, which is only the technical apparatus of legislation, but it must extend its feelers in two directions: towards the constituents, complying with their instructions, and towards the executive, specialized administrative organization which it had placed under strict control by becoming a "working body".

Lenin provides more information on this train of thoughts in *State and Revolution*. "The Commune constitutes for the venal and rotten parliamentarism of bourgeois society institutions in which freedom of opinion and discussion does not degenerate into deception, for the parliamentarians themselves have to work, have to execute their own laws, have themselves to test the result achieved in reality, and to account directly to their constituents. Representative institutions remain, but there is *no* parliamentarism here as a special system, as the division of labour between the legislative and the executive, as a privileged position for the deputies."<sup>75</sup>

<sup>73</sup> Marx, K.—Engels, F.: *The Civil War in France, Selected Works in Three Volumes*, Vol. 2, Moscow, 1969, p. 220.

<sup>74</sup> *Ibid.* p. 220.

<sup>75</sup> Lenin, V. I.: *Collected Works*, Vol. 25, Moscow, 1974, p. 424.

The unity of legislative and the executive activities is raised here again, and in the sense that the deputies enforce the laws (Lenin did not tell more details about the forms of this), control the practicability, enforceability and enforcement of laws. Yet Lenin takes a stand against the views of all those who wish to liquidate all administration and subordination in an anarchistic manner. He only objected to the privileged position of officialdom. He writes, on the other hand, "Once we have overthrown the capitalists, . . . smashed the bureaucratic machine of the modern state, we shall have a splendidly-equipped mechanism, freed from the 'parasite', a mechanism, which can very well be set going by the united workers themselves, who will hire technicians, foremen and accountants . . ." <sup>76</sup>

Lenin's idea refers to the "unity" of a technically perfect, specialized state organization, and specialized agencies of administration, with legislation, i.e. to a politically subordinate, responsible, controlled and directed state apparatus. The motive behind this is evidently that a socialist society must, from the outset, be freed from the arbitrariness of an uncontrolled state apparatus alienated from the people. Yet it is clear that, in order to reach this purpose, experimentation was needed, attempts had to be made at newer and newer forms of state organization, solutions, which prevent the administrative, specialized part of the state apparatus from becoming harmfully independent.

The fact that exactly in this respect the socialist state organization had practically *no forerunner whatsoever* is by no means negligible from our point of view. Or, in other words, every early form of solution turned out to be of no use because of the very different aims set by them. Even if we admit that the *principles* of the experiment of the Paris Commune met with great sympathy of the socialist left, for example, of the Bolsheviks, in practice it was not a serviceable model because of its transitory nature, and the forms carried out only in small areas. As concerns the trends of development in bourgeois parliamentarism, we have already stated that to follow them was absolutely impossible. In the Hungarian literature on constitutional law, István Kovács traces back the special forms of Soviet state structure to the lack of parliamentary traditions. "The merger of the legislative and executive functions was appreciably promoted by the almost total lack of a deeply rooted structure of the division of powers attached to the parliamentary system," he writes. <sup>77</sup> As concerns the lack of parliamentary traditions in Russia and in Eastern Europe in general, we must agree with Kovács, but in this case we evidently face only a psychological question of detail, and not the aforesaid basic problem. The

<sup>76</sup> Ibid. p. 426.

<sup>77</sup> Kovács I.: *New Elements in the Evolution of Socialist Constitutions*, Budapest, 1968, p. 31.

fact, that at the beginnings of the Soviet power the traditional forms of parliamentary control were not even mentioned, is the result of the circumstance that the aim was to find new forms in an expressly anti-parliamentary atmosphere.

What I consider especially characteristic in this context, are a few attempts in 1922, mainly Articles 67 and 68 of the Armenian Constitution, which throw light upon the trend of solutions. According to this, the Soviets, the deputies of the executive committees, were under obligation to: (a) attend the meetings, (b) *work in the committees and sections*, (c) *implement* the resolutions of the respective meetings and presidiums, (d) report at regular intervals on their work and on the activities of the respective organs, (e) *execute* higher orders without hesitation. (I should like to remark that, at the end of 1919, the 7th Soviet Congress of the Russian Federation stated in its resolution on the Soviets that the deputies must report to their electorate every two weeks at least, and if they failed to do so on two occasions, they lost their mandate.)

All this shows that, in the first phase, one tried to accomplish the unity of Soviet legislation and the executive by drawing deputies, active in representative organs, into the activities of the specialized apparatus, i.e. by trying to make them *participants* of and *responsible* for *execution*. This is the first realization—characteristic of revolutionary times—of the original idea of unification.

While in that period the principle of the unity of legislation and the executive was upheld in the course of exploring new forms—especially by not separating the representative and executive administrative bodies from one another as in later solutions—this structure was completely changed in 1936. It is typical that the Constitution of 1924 defined one of the substituting organs, the Presidium of the Central Executive Committee, as the supreme legislative, executive and decision-making organ of authority, for periods between sessions of the Committee, and the Council of the People's Commissars as the executive and decision-making organ of the Central Executive Committee. I have mentioned elsewhere that, up to 1936, the institution of legislative monopoly was unknown in Soviet constitutional law.<sup>78</sup> All this shows that the principle survived—with the support of unclarified competences—and that it was primarily the breaking up of the organization that was used for the unification of functions.

The state-organizational model of 1936 chose this practice neither in general nor in particular. Up to 1936, as I have shown above, the vertical division of powers among the central organs did not take place, or, in other words, the boundaries became indistinct everywhere as a con-

<sup>78</sup> Bihari, O.: op. cit. p. 80.

sequence of the fact that the right of legislation was due to many organs (to the Soviet Congress of the Soviet Union, the Central Executive Committee and its Presidium), while the functions of the executive were similarly extended upwards (up to the Central Executive Committee) from below (from the Council of the People's Commissars). On the contrary, the Constitution of 1936 created rigid categories—at least on this level—adopting in some cases certain elements of the constitutional phraseology of European parliamentary practice. Therefore, the state-organizational scheme suggests, even in its definitions, Montesquieu's triad, completing it with the procurators' organization. This constitution no longer mentions the unity of legislation and the executive. I have already spoken of the characteristics of Article 14; no reference to executive activity can be found here, as it is also missing from Articles 30–32 which contain the fundamental features of the powers of the Supreme Soviet, or from Article 49 laying down the powers of the Presidium of the Supreme Soviet. On the other hand, since Article 32 states that “the legislative power of the USSR is exercised exclusively by the Supreme Soviet of the USSR”, the power which might formally be called legislative power could, of course, not shift to the Council of People's Commissars stated to be the supreme executive and administrative organ.

There is no point in investigating the actual subdelegation of the real “adoption of laws”, i.e. legislation of the highest rank within the Soviet constitutional organization of 1936. (This will be discussed in connection with the present constitutional model.) Here I should like only to emphasize that in 1936 this constitutional *principle* was removed from the agenda and the principle of the rigid separation of the organization was put in its place. Such categorization as “state-authority organs—state-administrative organs—judicial organs—procurator's offices” clearly reflects the demand for a new, *separated state model*, where the primacy of one or the other organ may continue to be characteristic (and in this respect it may differ from Montesquieu's original idea just as much as the constitutions of other types in the 19th century did; the monarchic-restorative and the parliamentary-republican ones alike). Yet primacy was realized in this period by other means than those in the 1918–1924 scheme.

This change of interpretation was duly followed by the Soviet theory of constitutional law. The primacy of the representative organs—including the Supreme Soviet—is emphasized in general as a principle, and scientific works add to it the problem of representative organs as working bodies, as well as the duty of deputies to take part not only in legislation, but also in promoting execution. (For example Lepeshkin, in characterizing the Soviet popular-representative organs, points out on the one hand their “absolute power”, i.e. that the powers of all other Soviet organs originate in them. On the other hand, these representative organs *supervise* all the

activities of the executive, and, finally, these organs are working bodies—contrary to all bourgeois representative organs—and Lepeshkin sees in this latter feature the realization of the example set by the Paris Commune.)<sup>79</sup> A still more clear-cut stand is taken by Tikhomirov in his highly interesting article on this topic: “As it is well known, the entire system of the Soviets, i.e. the highest and local Soviets in their unity, is interlinked with executive organs. The state activities of the highest power organs, however, find expression not only in legislation, although the 1936 Constitution of the Soviet Union outlined only this form of activity. At the same time, it would hardly be proper to artificially confront the legislative activity of the highest organs of authority with their executive activity, and to consider this confrontation a desirable prospect of interference with some special administrative sphere.”<sup>80</sup> Thus the quoted standpoint draws the ultimate consequence from the Constitution of 1936 in that it makes no distinction between the interrelations of the various state organs: the relationship between the organ at the top of the power and representative organization and the organs of state administration is, in essence, regarded by the author as a technical problem of the division of labour.

Quite interestingly, following one of the lines of development, we have come to the *negation of the unity of legislation and the executive* not only in the practical sense, but also in principle. The *course of this development was leading from the insistence on full unity, from the executive functions of the deputies of the Soviets and their committees, through the parallelization of powers to the delimitation of the types of state organization*. But there exists no such standpoint in the Soviet political science which would deny in this connection the “representation-centric” character of the state mechanism. Yet it is tried to realize this view in other relations of the executive organs.

It is strange that the development described above can by no means be regarded as the only possible alternative—in spite of the fact that it cannot be logically impugned. So it is worth investigating what are the reasons for this recent tendency and what effects it had on the new state-organizational model in our days.

What I have in mind first of all is not the Yugoslav form of solution which cannot be interpreted otherwise than one of variants preceding the 1936 solution. Article 282 of the Federal Constitution defines the Federal Skupshtina as the supreme organ of state power and social self-management. However, Jovan Djordjević adds, regarding the former constitution,

<sup>79</sup> (Lepeshkin, A. I.—Kim, A. I.—Mishin, N. G.—Romanov, P. I.) Лепешкин, А. И.—Ким, А. И.—Мишин, Н. Г.—Романов, П. И.: *op. cit.* pp. 266–267.

<sup>80</sup> (Tikhomirov, Yu. A.) Тихомиров, Ю. А.: “Разделение властей или разделение труда?” (Division of power or division of labour?) *Советское Государство и Право*, 1967/1, p. 17.

that this organ is of legislative and executive nature; but it is not possible to find in the enumeration of functions any instance of executive ones in the strict sense of the term, in this connection the Constitution establishes the following important powers: framing of the constitution, legislation, passing of resolutions, the approval of the social plan, the federal budget and the appropriation accounts, the ratification of the most important international treaties and agreements, etc. On the other hand, it appears from the text of the Constitution (Article 346) as well as from the explanations of Djordjević himself that the executive function is delegated to other organs, first of all, to the Federal Executive Council by the supreme federal representative organ. ("The new constitution maintains the institution of the Federal Executive Council, the collective organ of the Federal Skupshtina, and the latter entrusts the Council with the duties of execution, with the political and executive function under its supervision.")<sup>81</sup> Thus, the apparent unity is maintained, while the Constitution in fact—in its contents—does not go beyond the control system of other socialist constitutions. This problem was not particularly analysed in the Yugoslav scholars of political science.

A debate of altogether different nature began already prior to the enactment of the Constitution of 1960 about the main types of the Czechoslovak state organization and their interconnections. The results of this debate can be discovered in the Constitution proper, as well as in studies interpreting the Constitution, and in later statutes. The text of the Constitution is relatively conservative, as it characterizes the main units of the state organization as follows: the National Assembly is the supreme organ of state authority, the single national legislative body; the President of the Republic is the representative of state authority at the head of the state; the government is the supreme executive body of state authority; the Czech and Slovak National Councils are the supreme organs of state authority in the Czech and Slovak Socialist Republics; the national committees are the organs of state authority and administration in the given territorial units, etc. The conspicuous feature in this enumeration is the duality of definition in the case of the national committees, the simultaneous stressing of their state—authority and administrative character.

The unity of state authority and state administration, or, in other words, the unity of legislation and the executive, is emphasized on the level of the national committees as appears from the Constitution. Yet the commentaries and later articles leave no room for doubt that it was intended to bring about greater changes in the model in this very respect already in the period when the Constitution was framed. While Paragraph

<sup>81</sup> Djordjević, J.: Introduction, *Constitution de la République Socialiste Fédérative de Yougoslavie, Recueil des lois de la RSF de Yougoslavie*, Volume VII, Beograd, 1963, XI, p. 11.

/3/ of Article 2 of the Constitution, enumerating the representative bodies of the working people, declares that "the power of the other state organs originates from these representative bodies", this expression of priority was not held sufficient in legal science. Especially Pavel Levit gave general expression to a constitutional standpoint of decisive importance—the constitutional reflection of which can be detected only below the level of the central organs—when he declared in his treatise: "... the traditional dividing line between legislation and the executive is unknown to the new constitution".<sup>82</sup> This question was dealt with more in detail in the Czechoslovak literature later on. According to Vladimír Delong "the expression 'organ of state authority' denotes first of all the leading position of representative bodies in the socialist state apparatus; in the original and accurate sense of the term, the organs of state authority are the representative bodies. The fundamental requirement of the socialist system of popular representation is the unity of decision-making and the executive. The employment of this postulate in the building up of the state organization leads to the cessation of the organizational separation of administration from the bodies of popular representation, and to the establishment of uniform organs of state power and administration."<sup>83</sup> Bertelmann, polemizing with him, went back to the constitutional change in 1936 and said that the separation of the organs of state authority from the organs of administration became the source of errors and unclarified standpoints, and that, in reality, formalism and pettiness became characteristic in the activities of representative bodies. He points out from the Constitution that the term "organ of state authority" was used to denote not only the position of these organs, but also their specific nature, such as in the case of the national assembly—in addition to legislation—the supreme direction and control of the state, the confirmation of the plans, the supervision and checking of their implementation (and in the case of the national committees, the right of appointment, of financing, and the direction of services, in addition to framing general norms). According to Bertelmann, the earlier separation denied the unity of representative bodies and their executive departments, putting in their place the unity of

<sup>82</sup> Levit, P.: Les organes suprêmes de l'État dans la nouvelle Constitution, *Bulletin de Droit Tchécoslovaque*, XVIII, 1960, issues 1–2, p. 70. The same standpoint was set forth by Vladimír Procházka: "... the old distinctions between the organs of state authority and state administration were rejected by the new Constitution". He referred to the debate in the National Assembly where attention was called to Lenin's principle of the unity of decision-making and execution and the unity of state authority and state administration. (Procházka, V.: La constitution socialiste de la Tchécoslovaquie et le chemin y ayant conduit, *Bulletin de Droit Tchécoslovaque*, XVIII, 1960, issues 1–2, pp. 38–39.)

<sup>83</sup> Delong, V.: „Orgány socialistického státu a státní správy”, (Socialist state and state administrative organs) *Acta Universitatis Carolinae Iuridica* 2. Praha, 1962, pp. 107–108.

executive committees and their sections, although the difference between the latter ones is much greater than between the former ones.<sup>84</sup>

What did the Czechoslovak scholars of constitutional law mean by the unity of state authority and state administration on the supreme level? A most detailed picture of this was given by Levit in his quoted study where he set forth that a single and indivisible popular power renders any division of powers, any system of checks and balances impossible. The relations of the supreme state organs "are those of the division of labour and responsibility, as well as relationships of cooperation and common work". He points out as typical the provision in Paragraph /2/ of Article 70 of the Constitution set aside since, according to which "the government and its members shall perform their tasks in direct cooperation and agreement with the National Assembly and its organs." From among Levit's conclusions I should like to point out his view that "the new constitution does not recognize the traditional division of legislation and the executive even in the relations of the supreme state organs; it does not recognize the purposeful division which is characteristic of bourgeois parliamentarism. The new constitution sanctions the uniting of legislation with the executive, the indivisibility of the procedure of legislation and its practical application in respect of the national plan. He refers also to the no longer valid Paragraph /2/ of Article 40, according to which "the National Assembly, with its activity and with the work of its organs and deputies, actively contributes to the accomplishment of the tasks of the socialist state", as well as to Article 56 (the re-worded text in Paragraph /1/ of Article 48 in the amendment of the Constitution of 1968) where the deputies' oath contains the obligation to work for carrying into effect the constitution and other statutes.<sup>85</sup>

Thus the Czechoslovak state-organizational trend differed considerably from those mentioned before, and pointed out a few highly noteworthy problems. We must especially consider, e.g., Levit's example according to which legislation and its preparation, or the enforcement of statutory provisions on various levels, is difficult to be delimited in the course of the preparation of the national-economic planning. But the amendment of 1968 loosened up the principles of 1960, and provided for a rather systematic separation of legislation and the executive in the supreme organizations of the Federation and the Republics.

The Soviet Constitution of 1936, and the models following it, adopted solutions because the said constitution substituted a model for a mechanism which in reality did not exist or was reduced to insignificance. The pattern of jurisdictions was easier to comprehend in the case of the new

<sup>84</sup> Bertelmann, K.: "K problematice pojetí orgánů státní moci a správy", (On the problems of the concept of state power and state administration) *Právník* 8/1964, pp. 738-739.

<sup>85</sup> Levit, P.: op. cit. p. 70.



model. The endeavour was not to create some abstract division of powers, but rather to define the standard of the division of labour. The Soviet Constitution of 1936, and subsequent other socialist constitutions, tried to establish working relations among the representative organs in leading position and the organs of state administration (and other organs). The Soviet Constitution of 1977 further simplified this idea. In Article 2, Paragraph /3/ it emphasizes the right of control exercised by the Soviets over all other state organs, and the duty of the latter to render account to the Soviets; Article 89 speaks only of the uniform system of the Soviets of people's deputies.

The issue of the *reality of jurisdiction* is attached here and elsewhere to the question whether the subject of investigation is a legally relevant resolution, decision, or to the problem: which organ is entitled to pass a decision of this nature. From this point of view the separation of powers is important and constitutionally unavoidable, unless we are to endanger legality (as concerns the citizens, it is by no means indifferent on the basis of legal awareness, which organ, and in what form, frames the compulsory rules). A well-arranged pattern of competence, the separation of the issuance of legally relevant acts from any other intermediate acts, is a question of legality, of constitutionality, and hallmarks to a certain extent the level of the refinement of legislation.

But one cannot deny that the problem of legislation cannot be closed down with all this. Namely the question, considered otherwise simple, is complicated by a political and sociological factor. The question as to where the decisions are actually made—whether by the organ which had passed the decision of legal relevance, i.e. which has the formal right to pass resolutions, or by an organ within or, eventually outside, the state organization—is not to be neglected, for it may often render power questionable and changes the organ vested with such powers into an organ of only formal assent. But this may happen to any decision if tensions arise between legal regulation and real social forces. The Czechoslovak model has revealed this possible tension at one point and in one relation: between power and representative organs and the organs of state administration. A sociological factor was transformed into a question of state theory (into Lenin's principle of legislation and the executive) and into a scheme of constitution: the negation of the difference and divisibility between state-authority and state-administrative functions.

The example quoted, i.e. the indivisibility of the process of state planning is really a fact, but a sociological one and not of legal as well as of constitutional nature.

As I have mentioned at the beginning of my explanations, quite a number of factors must be reckoned with before answering this question. Historical development is certainly the *magistra vitae* in this case. The

experiments, their success and failure, our former final standpoints and then the withdrawal of them, the repeated clearing of the terrain, provide the keynote to the study of our present model.

## 2. Technical and Legal Possibilities of Legislation

The first reflection of the aforesaid problems can be detected most clearly in the framing of statutes. In accordance with our subject, we must consider first the most complex—and at the same time the most important—way of framing laws, i.e. legislation and its supplements. This complexity is especially due to the fact that, although the contents of these legal acts are usually of primarily *political* importance, owing to their subject, each of them contains highly *specialized* (professional) issues, i.e. elements which can hardly be discussed in a democratic way. In the majority of the socialist countries, today there are always less legislative acts that are “solemn”, and therefore do not contain any real disposition and sanctions. In our present conceptual system, a law is, beyond doubt, a norm more or less of skeleton nature in most cases passed on *professional issues*, yet, interwoven with *political* decisions. It is not exclusively of professional, specialized nature, for such decisions serve the development of a society of specified aims; on the other hand, it is not a sterile political act, because the political aims must, and can be realized in various professional fields.

It is the duality of the content of the law which provides the technical source of legislation. It is only evident that a political decision must be reached in the political layer of a bill (efforts must be made during the preparation to have the political objectives of the draft discussed by political public opinion on the widest possible basis); at the present stage of development and overspecialization of professional questions, only scientific teams are suitable for preparing bills, but, simultaneously, care must be taken that, while the preparation of bills should be exact, at the same time, the text of the drafts should be easy to understand to all citizens, and it should be controllable in the phase of preparation whether no departure was made from the original political intentions. It is natural, too, that—taking into consideration the conditions under which they can be realized—certain political objectives must, and can necessarily be modified as in the course of these phases.

Where should questions *belonging to the political layers* of a bill be prepared and decided? Three spheres of preparation are conceivable in a socialist society: first, the *political-social* organs including first of all the leading political force of the society, i.e. the Marxist-Leninist party,

which is capable of displaying the optimum of scientific political activity; second, the *other mass organizations of political nature*, including, in certain socialist countries, also other parties; and, third, the *committees of the popular-representative organs* entitled to reach decisions, their other preparatory organs, as well as *direct democratic actions*, consultative plebiscites, referendums. The role of these organs and institutions taking part in the preparation is different at different times, in respect of subject-matters (and countries), but until now practice has shown that this activity is concentrated in time.

In every state where the popular-representative form of exercising the people's sovereignty is laid down, decision on the political layers of a bill must be reached in the supreme organ of state power and representation. Such a decision must be realistic also in the sense that the majority of this organ should not automatically take a stand for this or that version of the bill, but should do so out of its conviction that the bill is good. According to the constitution, and with *such content*, the decision is within the authority of the supreme organ of popular representation which expresses and embodies the people's sovereignty.

It should also be taken into account, that the organs of this type are made up of persons of various occupations who represent various strata of the population. Through the act of election, the population confers a *political mandate* on its deputies, its representatives. Organs of popular-front nature, the parties, the mass organizations and movements confer political mandates on their deputies. It is not impossible that the citizens elect deputies of high scientific qualifications, but the basis of election is not the degree of scientific attainments, it is rather political confidence and the willingness to undertake certain tasks. I therefore maintain that the fundamental task of the supreme representative organs is to make legally relevant *political decisions*.

To bring the political and professional preparation and decision into some kind of harmony is a complex but not negligible task. *That is why the political organs* (parties, other mass organizations and movements and representative bodies) *make efforts to create expert groups of their own so that they can control the preparatory work of professional organs* and see whether their own political objectives are realized. So this is the first organizational form in this field which establishes an equilibrium: the aspiration of the political organs, including the representative bodies, to perform their own function properly, and the organizational steps taken in this direction. It is obvious that in whatever way a committee of a representative organ widens its frame, it cannot have such professional knowledge, such research potential as is available to a scientific institution or a body of experts set up for the particular purpose. These political organs display an activity in respect of the political layer of bills.

The preparation of a decision may not be limited to ensuring the correctness and expediency of the political line of a bill or suggestion: the possibility of reaching a decision of approval or rejection *on a specialized issue* must be also provided for in some way. Yet this may be entrusted only with great reservation to democratically created organs and institutions expressing the people's sovereignty. This part of preparation must be entrusted to experts, and they are to be found either in the administrative organs or in institutes whose control is in the hands of the administrative apparatus in most socialist countries. Such organs of administration are mostly specialized administrative units and are organizationally suitable for preparing optimal decisions. But it is exactly this professional decision that is the most problematic, for, as I have mentioned, a proper decision in this respect is not to be expected from a democratically elected representative organ. So, where is the key to solution?

First of all, we must realize that at the present stage of technical development, with the immense number of issues to be regulated, it is hardly possible and proper to expect a large number of statutes to be of too casuistic nature. A mass discussion on detailed bills is technically infeasible since for the most part these provisions about details no longer belong to the sphere of political decisions, but rather to the sphere of professional ones. *So it is understandable that, in reality, the acts of parliament are usually of skeleton nature in the socialist countries*—apart from certain laws of purely legal-political nature, such as a criminal code, procedural rules, codes of labour etc.—and *that besides, a hierarchical legislation is created on a legal basis*. In such cases the law contains the political objectives and the most important professional provisions for realizing them; the detailed rules, I might as well say the *technology of realization*, are contained in the provisions of executive clauses issued by lower organs legally authorized. (Needless to say, graded legislation presupposes the strictest observance of legality, its supervision by the supreme representative organ, and various forms of its protection, such as by the procurator's offices.)

We have not answered yet the question regarding the role of the representative body in cases of professional problems which cannot be eliminated even from bills of highly skeleton nature. In my opinion, the representative body must rely on the administrative organs with due precaution, provided among others through the controlling activity of its own organs. In the professional part of the decision it must practically approve of the preliminary decision of the central administrative organs responsible to the representative body and working along the political line of the latter. This means that the representative body must, in practice, give up the thorough discussion of the professional questions or else it could hardly avoid superficiality. The situation in most socialist countries

is that the councils of ministers, the most frequent initiators of bills, formally pass decisions also on professional questions; it is not customary to open debates on professional, special issues in the highest organs of state authority and representation. As there are often extensive debates on the political content of the bills in the plenary sessions of these organs, this is by no means the case with issues of highly technical-professional nature.

As I have said, political organs try to create some *minimum of professional control* for their decisions. It is only natural that the professional, special-administrative preparatory and decision-making organs try to *coordinate* their activity *with the political objectives*. Since knowing and judging political objectives is by no means a monopoly, the interest shown in political matters comes out of necessity and is in itself a precondition of adequate professional solutions. I believe it important to point out that in the case of bills the political decisions are reached by political organs and institutions (viewed from the constitutional angle, first of all by the highest organs of popular representation).

*The multi-stage pattern in national legislation shows that, for practical reasons of the division of labour—which, however, must not be regarded as merely a technical problem since it is actually the fundamental problem of constitutional practice—a close connection exists between the highest organs of popular representation and the organs of state administration in the sphere of legislation even if it is not perceptible in the constitution proper. What is involved here in my opinion is not what the quoted Czechoslovak authors tried to demonstrate, but it is a politico-sociological factor and the requirement attached to it: the stabilization of political-legal decisions and their most important parts at the highest representative body; at the same time, it entails the participation of lower, though specialized central administrative organs in the preparation of specialized decisions, and in decisions about partial statutes framed on the basis of law.*

The uncertainty in the distinction between the powers of popular-representative bodies and organs of state administration has long been a concern of socialist political science. I have mentioned its Czechoslovak reflection, but other political scientists often mentioned that this problem was not solved yet. (Sheremet<sup>86</sup>, Lazarev<sup>87</sup>, Tikhomirov<sup>88</sup> and other Soviet political scientist.) As for me, I have expressed this uncertainty in

<sup>86</sup> Scheremet, K. F.: "Der XXIII. Parteitag der KPdSU und die Entwicklung der Sowjets", *Staat und Recht* 1966/9, pp. 1448–1449.

<sup>87</sup> (Lazarev, B. N.) Лазарев, Б. Н.: „О компетенции органа советского государства” (On the competences of the Soviet state organ), *Советское Государство и Право*, 1964/10, p. 51.

<sup>88</sup> (Tikhomirov, Y. A.) Тихомиров, Ю. А.: Разделение властей или разделение труда? (Division of power or division of labour?) *Советское Государство и Право*, 1967/1, p. 17.

my work entitled *Socialist Representative Institutions*<sup>89</sup> as follows: "...no theoretical line can be drawn between the functions of the representative and the administrative organs, in particular when the latter are such of general competence . . . This is what is inferred from historical experience and the testimony of socialist state structure. For want of absolute distinctive marks and a theoretical solution, the assignment of competence here has to be entrusted to the practice of state agencies." And then, as a completion, I have taken the stand that the tasks assigned to the representative bodies, and coming within their exclusive or other competence, must be laid down by the supreme popular-representative body in statutes on the basis of the rationality of the technical division of labour.

I insist on this standpoint of mine as before, especially in respect of legislation. To ensure the proper activity of socialist state organs, the development of socialist democratism, we might say that the definition of the legislative matters is of primary importance, and that the fundamental norms in these matters must be framed by the supreme organ of popular representation, and that this organ must be in the position to (a) determine the *political objectives* of the field to be regulated within the scope of Acts, and (b) decide *to what depth* it will regulate professional questions, in itself, or, respectively, on what level it permits other organs (its substituting organ, general or specialized organs of administration) to reach formal decisions.

Of all that, the definition of the issues regulated exclusively by acts belongs to the constitutional level. The exclusive legislative authority does not mean that all minute questions of the subject-matter concerned must be regulated by the supreme organ of popular representation; it rather means that the fundamental statute which contains the political objectives and the framework of the professional decisions must be adopted in the form of an Act of Parliament, and that the supreme organ of popular representation must give statutory authorization as to which organ is entitled to issue regulations of details in a legally binding form.

The question of the division of labour we mentioned before is not a constitutional problem, it is part of a legislative technique; namely that the supreme organ of popular representation must have a part in the decision of professional questions with due self-restraint. It must understand that the state-administrative organs created by it directly or indirectly are more suitable to prepare professional questions, and to reach reasonable decisions on them, than the political organs created in a democratic way. Its influence on the level of realistic decisions extends as a minimum—even must, in fact, extend thus far—to check the realization

<sup>89</sup> Bihari, O.: *Socialist Representative Institutions*, Budapest, 1970, pp. 93–94.

of the political objectives in the professional provisions. Since, however, political and professional spheres are not, by their structure, separated in the statutes, this task of the representative body cannot be automatically fulfilled. But if we consider the renewed parliamentary activity of recent years in the socialist countries, we must regard this requirement proved, because the deputies, in their contributions to the debates on given bills, practically without exception, examine the political side and their realization. In the course of preparation, too, the organ of popular representation as their own organs, inevitably turn their attention to the political side of the question: this applies, e.g. also to the various committees. Article 285 of the Yugoslav Constitution of 1974 is characteristic in this respect: enumerating the Federal Council's tasks, it puts the "establishing of the fundamentals of the home policy and the foreign policy of the Socialist Federal Republic of Yugoslavia" to the second place and speaks of legislation only after this. That means, beyond doubt, that the two tasks are interactive and that this organ considers the bills in the light of general political principles.

The question of what organs or institutions—whether political or mainly professional—are regarded by socialist constitutions and other statutes as most important in being drawn into the process of legislation is characteristically elucidated by a fact actually of second rate importance but which affects this issue directly: the *right to introduce a bill*. The changes in the ways of constitutional thinking during the last two decades are worth observing. The expansion and direction of the right to introduce a bill betrays much in this respect.

The first view appearing in the popular-democratic constitutions framed after the liberation practically followed the course of bourgeois parliamentarism. (The right to introduce a bill was not mentioned in the 1936 Constitution of the Soviet Union). The Hungarian and the Polish Constitutions granted this right to the presidential organs (Presidential Council, State Council), to the government, and to members of parliament. We must mention in this connection that, besides a regulation like this, it was self-evident for the governments to make use of this right almost exclusively, since the presidential organs had practically no really suitable apparatus of their own for this purpose: neither was this right granted to the various groups of deputies, viz., more exactly, their interests were directed towards other objectives. Two socialist constitutions drawn up in 1960 tried to widen the sphere of organs and institutions authorized to introduce a bill. Thus the Mongolian Constitution (in Article 19) empowered the permanent committees of the Great People's Hural and the Supreme Court to initiate legislation, in addition to the customary tripartite enumeration (which meant the presidium of the Great People's Hural, the council of ministers, and the deputies in this

case). According to Article 52 of the Czechoslovak Constitution of 1960, the traditional sphere was expanded beyond the generally acknowledged organs, with the committees of the National Assembly and the Slovak National Council. This was changed in 1968 to the effect that the deputies of the Federal Assembly invested with this right the groups of deputies, the committees of both Chambers, the President of the Republic, the government and the two National Councils.

Following the amendment of the Hungarian Constitution in 1972, every parliamentary committee was granted the right of initiating legislation.

The gate was opened wide by Article 298 of the Yugoslav Federal Constitution of 1974. In the legislative activities of the Chamber of Republics and Provinces, "the right to introduce bills is vested in the Federal Executive Council, in the federal parliaments, in the provincial parliaments, and in all delegations and working bodies of the parliaments of the autonomous provinces".

Two new statutes, a Constitution and a rule of procedure tried to give an up-to-date answer to this problem of preparing legislation. Article 68 of the so-called rules of operation of the Grand National Assembly, adopted on the basis of the Rumanian Constitution of 1965, granted the right to introduce a bill to the Council of State and the Council of Ministers; within the representative organ, the same right was granted to the standing committees of the Grand National Assembly—but only in questions within their jurisdiction—and to groups of representatives consisting of 35 members at least. So, the standing committees were given appropriate right to introduce a bill, but since the committees manifest specialization within the organ of representation, they realize such specialization—quite understandably—in the framing of bills. On the other hand, they render effective the right of the deputies, which as far as individual deputies are concerned—is only a formal right but can be transformed into reality by larger groups of deputies. Namely the many-sided information gathered by these groups, their contacts with specialized agencies, can change the deputies' position.

Article 65 of the Constitution of the German Democratic Republic continues to authorize—according to traditions—the Council of State and the Council of Ministers to introduce a bill, and authorizes also the committees of the People's Chamber to do so, without any restriction. It is more interesting, however, that this right of the representatives was also given to certain groups: it is the representatives of parties and mass organizations represented in the People's Chamber that may come forward with such activity, which means that, in this case, they evidently act as party groups or as groups of mass organizations, representing the will of the party or of the mass organization. This solution is an interesting



attempt of a socialist country to give contents to a multi-party system. It is similarly interesting, and typical of the basic trend of the GDR Constitution (cf. the standpoint set forth in Chapter 3 of Part II on the constitutional position of the trade unions) that the Federation of Free German Trade Unions is vested with the right of initiating legislation as the only institution outside the organ of representation.

Article 113 of the new Soviet Constitution gave the broadest definition of the initiation of legislation: "The right to initiate legislation in the Supreme Soviet of the USSR is vested in the Soviet of the Union and the Soviet of Nationalities, the Presidium of the Supreme Soviet of the USSR, the Council of Ministers of the USSR, Union Republics through their highest bodies of state authority, commissions of the Supreme Soviet of the USSR and standing commissions of its chambers, Deputies of the Supreme Soviet of the USSR, the Supreme Court of the USSR, and the Procurator-General of the USSR.

The right to initiate legislation is also vested in public organizations through their All-Union bodies."

If we compare the recent constitutional and other statutory provisions connected with the right to introduce a bill, it appears quite clearly that in recent years they are not only characterized by a considerably increasing number of organs, institutions, etc. entitled to do so, but also by the fact that their number continued to grow in one certain direction: in the direction of specialized organs of administration. While different organizations, till then outside the constitution were granted this right, other organs not expressly meaning the widening of democracy, were excluded as before, including also scientific institutions. Nevertheless, all this is no reason to leave out of consideration the *actual initiation of legislation* in most socialist countries, which is in the great majority in the hands of the government. The final reason for this is that the most suitable apparatus for the preparation of legislation is available to it in the form of the specialized ministries, or in the research institutes, specialized organs, subordinate to the ministries. Besides all this, a government—as an organ directly elected by the representative organ and, simultaneously, an intermediate institution between the democratic political representative organ and the typically specialized organs of administration—is, in itself, suitable for political decision-making. Through the fact, however, that the heads of the special administrative organs, of the ministries and other central organs, take part in the government's activity as ministers, under-secretaries of state, etc., the government co-ordinates the experience and views of the bodies of specialized administration.

A government, therefore, is a most suitable body for the endeavour to reconcile this bilateral requirement in the final phase of framing a bill, and from the outset to exercise its right to initiate legislation so that

assembling the political and professional "layers" in the bill should not be solely the task of the organ of popular representation. The government thus counterbalances the merely specialized nature of administrative bodies in the preparation of professional decisions, and also counterbalances the inevitably one-sided attitude of the political organs, including the supreme representative bodies. Consequently, the government is at the *meeting-point of two courses*, and is suitable, also organizationally, to perform this function. The members of the government are elected by the supreme representative organ, thus, the government is an organ of democratic structure. (Where a departure from this is shown, it applies only to details: according to the Czechoslovak Constitution, the government is appointed by the President of the Republic, but the government must ask for the consent of the Federal Assembly through presenting its platform; this is here an institution similar to the vote of confidence. According to Article 348 of the Yugoslav Constitution: "the president of the Federal Executive Council shall be elected by the Chambers of the Assembly of the SFRY on the proposal of the Presidency of the SFRY". The governments are linked with the representative organs in this respect (though it is no general requirement that the government be elected from among members of the latter). On the other hand, the members of the government are connected with the organization of specialized administration as its leaders. Hence the *government acts as a counterweight to specialized administration on the one hand*; on the other, it *reconciles the contradictions between the two poles of the state organization*, namely, the contradictions between the democratic-political organs and the official apparatus of specialized administration.

Thus key position of the government in legislation was soon recognized in the socialist countries; and the overestimation of this role was expressed in the right to introduce a bill, which—though constitutionally limited—is practically exclusive. As British constitutional history shows, how a system of parliamentary government could turn into parliamentarism directed by the government, it was proved also on the basis of the Constitution of 1936, and in most popular-democratic countries following this pattern, that in the field of legislation proper it is possible to go beyond all this through the good services rendered by the institution of a government. The checks and balances applied here—e.g. the right of the supreme courts, of political-social organizations, etc., to initiate legislation—may offer the opportunity to the government to exercise its constitutional rights, to fulfil its obligations, but *not to go beyond the legislative limits* which are outlined in every socialist state by the supreme popular representative organ's rights and possibilities originating in the people's sovereignty.

If I find it natural on the basis of the socialist constitutional idea that the government should play an important role in the preparation of legislation due to its suitability but may not substitute in its resolutions the political decisions of the supreme representative organ, I think that, for the same reason, it is not in harmony with socialist constitutionalism if the fundamental norms in matters of legislation are framed by the government in the course of its executive activities. This happens, for example, if an Act or a law decree having only a few sections is limited solely to authorization, or if the government, alluding to a skeleton-like statute, or, in some cases, to the constitution frames a primary norm. The multi-grade system of legislation is by no means to be construed as the complete delegation of the legislative power, i.e. of creating statutes of the highest rank in a given question; it only means that, after laying down the principles, the detailed rules in technical, specialized questions must be worked out and issued in due form by the government, or by the national organs of specialized administration. The violation of this principle has the consequence that the sovereign rights of the supreme organ of popular representation, and the legislative monopoly declared in the constitution are restricted. In what questions, what fields of norm-making the constitution declares the monopoly of legislation, is a constitutional problem. The framers of the constitution must see to it that this catalogue support the supreme representative organ's outstanding role in the state organization, that it render the rights arising from sovereignty exercisable. Where, however, there is no demand for all this, there is probably only need for a simple technical directing function of the specialized administration, and not of the government. (Although the earlier extensive nature of such administration was well curtailed by processes of decentralization, by changes in the system of economic control in several countries.)

No doubt, in the field of legislation we are confronted with a highly complex picture. On the one hand, we must conclude comprehensively that what corresponds to the constitutional principles in the socialist countries is the circumstance that the subject matters of legislation are—in agreement with the principle of the people's sovereignty—laid down constitutionally, and that the system of legislation and execution is accordingly developing. On the other hand, it must be guaranteed that the political and professional spheres are included in their interaction in the norms in the course of legislation. The preparation of the political elements is the responsibility of the political organs and institutions, and this is the part of the bills where the right of actual decision must by all means be reserved for the highest representative organs; while in special professional questions they must only decide whether they are in conformity with the political objectives expressed in given statutes. Under these conditions—which must be taken into account because of the highly

specialized nature of modern sciences—legislation calls for a multi-grade technical procedure. The compass of this must be defined on the various levels by the legislative representative organs. This means that a multi-grade legislation must be based as a rule, on laws, unless purely technical direction is involved. Thus the entire process must be kept under control by the highest organ of popular representation.

### 3. The Governmental Activity

In this connection we have tried to follow the legislative activity of the organ at the top of the popular-representative organization, and the working of the executive organs. The reason why we could not draw all conclusions on the unity of the supreme representative organs and the organs of state administration, or on the separation of their functions, is the simple fact that legislation is by no means the only characteristic activity of the organs of popular representation. As a result we must reckon with other tasks both as concerns the supreme organ of popular representation and the organs of state administration, especially those of the government.

As a matter of fact, a strict examination of the constitutional model must disclose the instances in the constitutions where tasks beyond legislation are found for which the constitutions define a common activity of the supreme organ of popular representation and of the government. (Although István Kovács refers the preparation of the acts of the supreme representative organs to the sphere of governmental activity,<sup>90</sup> I do not discuss this question here in view of the fact that I have analysed the ways of participating in legislation from every possible angle.) It is typical indeed that in Article 128 of the 1977 Soviet Constitution, the Council of Ministers—which is partly defined as the supreme executive and administrative organ—is called the government of the Soviet Union, thereby following the wording of the 1936 Constitution. I point out this characteristic because the expression “government” had not been used in the constitutions since 1918, and was in 1936 mentioned almost incidentally in an Article where no definition of this organ is given. The fact remains, however, that by 1936 the actual position of the Council of People’s Commissars had become greatly consolidated within the state organization, and that it had become the top body of state organization—corresponding to the party central committee—even in respect of its personal composition. This expression became common later on, and was

<sup>90</sup> Beér, J.—Kovács, I.—Szamel, L.: *Magyar államjog* (Hungarian public law), Budapest, 1960, p. 326.

more and more often included in the text of the constitutions. Of the East Asian constitutions, Article 47 of the Chinese Constitution of 1954 and Article 30 of the Constitution of 1978 term the Council of State, i.e. the Central People's Government, the executive organ of the supreme organ of state authority, the supreme organ of state administration; and the Vietnamese Constitution of 1960 originally calls this organ the Governing Council (*Conseil du Gouvernement* in French). In the European socialist countries, Article 29 of the Polish Constitution of 1952 and Article 37 (Paragraph /1/) of the 1976 Constitution call the Council of Ministers the government of the Polish People's Republic. Following the amendment in 1972, this body is called also "government" by the Hungarian Constitution. According to the Czechoslovak Constitution of 1968, the name of the supreme executive organ is expressly "government" (Article 66). Without drawing too far-reaching conclusions from the usage of certain terms, I have found that "government" and similar expressions came to the fore at a time when greater power was concentrated in the hands of the supreme organs of state administration than before, when the representative organs, as well as their substitute organs, had to face a crisis for some time.

Returning to jurisdictions, let us compare a few constitutional regulations in respect of state authority and the supreme organs of state administration. The 1977 Soviet Constitution no longer maintained the solution of 1936 which had started out from the definition of the all-union powers spheres of authority, without approaching in any way the jurisdiction of the Supreme Soviet. As I have already mentioned, the new Constitution enumerates the exclusive spheres of authority of the Supreme Soviet in five groups (Paragraph /3/ of Article 108). It enumerates the jurisdictions of the Presidium in 18 points, its delegated powers spheres of authority in 4 points (Articles 121–122). As for the Council of Ministers, its tasks are described in seven great items in Article 131. Two out of these are expressly related to internal affairs, viz. to economic and other management: one of them is about the management of the national economy and social-cultural work, the other about the elaboration of socio-economic development plans and their submittal to the Supreme Soviet. Two further items deal with the safeguarding of state-interests and the ensurance of state security; the following ones with defence and foreign relations. Finally, the Council of Ministers is given the right to establish its own organs. Naturally, the sphere of authority of the Council of Ministers must be regarded, to some extent, the implementation of the higher level regulation of the Supreme Soviet and its Presidium. Thus, for example the domestic economic activity of the Council of Ministers can be traced back to the state, economic and social development plans approved by the Supreme Soviet, and its defence functions to the

respective jurisdiction of the Presidium. The powers possessed by the Supreme Soviet or its Presidium are more general, whereas those of the Council of Ministers are much more concrete. Nevertheless, we may say that the enumeration to be found in Article 131 indicates an increase in the number of specific and independent tasks belonging to the Council of Ministers.

There is another characteristic change that has to be mentioned, too. Whereas Article 31 of the 1936 Constitution gave the all-union spheres of authority to the Supreme Soviet with the condition that—according to the Constitution—they did not belong to the subordinate organs (*viz.* the Presidium, the Council of People's Commissariats or the People's Commissariats), Article 131 of the 1977 Constitution reversed this relationship. Now, decision on a question of state administration belongs to the jurisdiction of the Council of Ministers, when—according to the Constitution—it does not belong to the powers of the Supreme Soviet or its Presidium.

The Polish fundamental law does not enumerate the powers of the Sejm, the supreme representative body; it speaks only of legislative and controlling powers. On the other hand, Article 41 regulates the powers of the Council of Ministers rather exhaustively. The following of them are simply of administrative, executive nature: the co-ordination and direction of the work of the ministries and other organs subordinate to them (item 1); ensuring the enforcement of laws (item 4); attending to the implementation of the national socio-economic plan and the budget (item 5); issuing decrees, passing resolutions on the basis of laws and for their enforcement (item 8); directing the work of the local organs of state administration (item 11). The following may be regarded as preparatory functions: approval of the draft budget, of the national socio-economic draft plans (covering a few years) and submitting them to the Sejm (item 2); submitting the annual report on the implementation of the state budget to the Sejm (item 6). A little more independent is the Council of Ministers in approving the annual national socio-economic plans (item 3). Yet, particular independent powers can be found in three fields: in the function connected with home affairs, maintenance of public order, protection of the interests of the state and of the rights of citizens (item 7.); in the international defence (strengthening the defensive capacity of the country, laying down the general policy of organizing the armed forces, fixing the annual contingent of citizens to be drafted for active service).

The structure of the Hungarian Constitution in this respect completely differs from the former: Paragraph /3/ of Article 19 defines—though not too firmly—the so-called explicit powers of parliament, while it speaks only very roughly of the tasks of the Council of Ministers. Nevertheless, a

few examples of these two different powers are worth enumerating. Paragraph /2/ of Article 25 of the Constitution assigned the right of legislation to the exclusive competence of the parliament; accordingly, item b) of Paragraph /1/ of Article 36 declares that the Council of Ministers shall ensure the enforcement of the laws (and of the law decrees of the Presidential Council of the People's Republic). Thus, this is clearly an example of multi-grade legislation. Item c) Paragraph /3/ of Article 19 assigned the approval of the national economic plan to the authority of parliament. According to item e) of Paragraph /1/ of Article 36, the implementation of all this is within the powers of the Council of Ministers. According to item f) of Paragraph /3/ of Article 19, on the other hand, the ministries are set up by parliament; the work of the ministries and the organs directly subordinate to them is directed by the Council of Ministers (item c) of Paragraph /1/ of Article 36). Following this brief enumeration, the Hungarian Constitution grants general authorization to extend the powers of the Council of Ministers through statutory provisions (not defined accurately).

The new socialist constitutions contain varied solutions. The Mongolian, Yugoslav and Rumanian Constitutions enumerate the powers of the supreme representative and supreme administrative organ in detail. The Czechoslovak Constitution enumerates the tasks of the Federal Assembly, the powers of the government, while the Constitution of the GDR mentions the power of the Council of Ministers only rather scantily.

The Mongolian Constitution enumerates the powers of the Great People's Hural in 11 sections, and those of the Council of Ministers in 10 sections. It seems that, in a few cases, the authority of the Council of Ministers becomes independent of the authority of the supreme organ of state power. These are not always important matters (like the approval of stamp designs, or authorization to make stamps bearing the arms of the state, pursuant to item j) of Article 41).

It follows from the strict definition of powers in the Yugoslav Constitution that the supreme executive organ, the Federal Executive Council, was granted considerably independent powers in the field of administration and execution (Article 347). The Federal Executive Council defines for instance independently the general principles for the organizational pattern of the federal administrative organs, it may form federal administrative organs not provided for by the law, may invalidate orders of federal administrative organs if they are contrary to federal laws, to federal decrees, or to other orders of the Federal Executive Council. The Council performs, of course, preparatory and executive activities in other fields as well, but it is characterized by its independent sphere of tasks. On the other hand, Article 283 of the constitution enumerates quite a number of powers of the Federal Skupshtina which have no administra-

tive bearings (electoral functions, the drawing up of boundaries, decision in matters of war and peace, etc.).

The Rumanian Constitution enumerates 23 tasks of the Grand National Assembly, while only 11 of the Council of Ministers. This considerable difference results primarily from the fact that Article 43 of the constitution is dealing with the powers of the Grand National Assembly, enumerates the election, recall and supervision of all organs of major importance in separate items. What is more important for our purpose is to find out which are fields where the Constitution assigns independent powers to the Council of Ministers. These may be summed up as follows: the definition of general measures for realizing domestic and foreign policy (the powers of the Grand National Assembly include a provision in reaction to foreign policy: to define the general line of foreign policy in section 20, but, interestingly, no such powers were granted to the supreme organ of state authority in the field of domestic policy); the establishment of economic organizations of the state, of enterprises, institutions of nation-wide importance; the maintenance of public order, the protection of the interests of the state, of the rights of citizens; the general organization of the armed forces, and fixing the annual number and the groups of the citizens to be drafted for military service (according to the resolutions of the Council of Defence); and, finally, supporting the activities of mass and social organizations.

It is characteristic of the Constitution of the GDR that it discusses the state organization, including the authority of the various organs, relatively briefly. Accordingly, general tasks are assigned to the People's Chamber, such as laying down development targets; defining the basic rules for the co-operation of citizens, communities and state organs; defining the principles for the activity of other central organs; the election of specified organs, the confirmation of international treaties, and decision to declare the state of defence (Articles 49–52). Articles 76–78 of the Constitution grant organizational powers, assign tasks connected with scientific plan and international tasks to the Council of Ministers. Within all these, the Council of Ministers directs, co-ordinates and supervises the activity of ministries and other central state organs, as well as of the district councils (executive-dispositive organs), and decides in matters of concluding and denouncing treaties.

I cannot avoid presenting the provisions of a few old and new constitutions in order to show how far the constitutional relations between the supreme organ of popular representation and the organ at the summit of the administrative organization are from being settled. Not even a general common trend can be discovered in the constitutional models otherwise standing close to one another. If we to summarize the principal lines of the rules established till now, the following solutions can be seen:



(a) The Czechoslovak solution is at one of the poles: it tries to *attach* the activity of the government closely to the functions of the Federal Assembly; the government should—in essence—promote, prepare and execute these functions.

(b) At the other pole is the solution in the GDR, where the council of ministers is an independent organizational-scientific organ, and, as the state organ for realizing organizational science, its role changed considerably.

(c) The models showing the division of labour of various degrees are between these two poles. Of course, it depends on the political attitude held at the moment of framing a constitution, what type of model is included in the given constitution. Based on the general authorization included in the constitution, the actually exercised powers of the council of ministers, i.e., of the government, may change substantially. As I have mentioned, it seems from Paragraph /1/ of Article 35 of the Hungarian Constitution that the powers of the council of ministers are not too wide. But the definition of powers within very wide limits, as well as the provision of point (d) according to which the council of ministers “shall attend to all tasks which are assigned to its authority by statutes” offers practically unlimited possibilities for expanding its own powers.

It may be concluded at any rate that the councils of ministers can expand their powers in two directions, depending on the form of constitutional regulation:

(a) *If the jurisdiction of the supreme representative body is not delineated in detail, or if at least the exclusive spheres are not set forth (including the jurisdictional ones), then the sphere of jurisdictional authority of the supreme governing body is exercised at the “expense of” the representative body (i.e. the supreme representative body does not exercise the power it has, but rather leaves it up to the council of ministers). This happens in most of the cases not in constitutional practice but in constitutional law.*

(b) *If the jurisdiction of the supreme organ of popular representation is defined in a sufficiently firm manner, the powers of the supreme state-administrative organ are shifted mainly in the organizational direction, and often at the expense of the specialized administrative organ; namely in our days the increased economic functions of a socialist state hardly make it possible that economic problems of major importance should be solved within the framework of one ministry or one specialized administrative organ. It is interesting to note that where the council of ministers is not able to perform—with the aid of its special organs—this co-ordinating-organizational function because of the situation mentioned in item (a), some other co-ordinating unit of fairly wide powers was created. Thus the task of general economic administration shifted down one step, and got wedged in between the council of ministers and central*

specialized administration. This solution therefore has considerably complicated the pattern of the spheres of authority and the hierarchial order of the constitutional model. This experience and the conclusions to be drawn from it deserve our consideration, all the more so since this affects the problem of renewing the system of economic management in most countries.

*Namely the system of economic management has, among others, a central organization which is outside the constitutional model; but, as we have seen, a rather close interaction develops among the constitutional and the extra-constitutional organizations.* This applies mainly to the specialized central administrative organs, especially those of economic nature. Special economic administration—which is, in fact, the specialized organization of economic management in the majority of socialist states—used the variations of two general forms during the five decades of the existence of the socialist state organization: One is “branch control” (i.e. control of various institutions belonging to respective ministries) which is extremely specialized and therefore requires a guidance, with great difficulties in co-ordination. The other is “functional control”. In this case the specialization of professional direction, along with its centralization, inevitably decreases. Namely branch control assumes the form of a strict, centralized administrative direction, or else the detailed division into branches and the guiding of lower organs or enterprise units through instructions would not be justified. The co-ordinating basis is badly missing from the state organization in this case. Such a co-ordinating organ may probably be the government itself, or some of its organs or committees, or some planning-co-ordinating, i.e. functional organ of independent powers, but subordinated to the supreme organ of state administration.

If, however, branch direction ceases partly or entirely in the central organization of administration, and the functional direction becomes predominant, or, at least, assumes greater weight, the complexity of the higher administrative organs decreases because the multiple direction employing a variety of methods ceases already within the organization of the ministries. (The so-called regional administrative direction need not be discussed here since this is actually a decentralization of various degrees.) In such cases the former *co-ordinating* organs are being transformed into *scientific-planning* organs, and national co-ordination becomes the responsibility of the supreme organ of state administration as a large-scale, high-level activity of truly political importance. Co-ordination is shifting inevitably upwards under such circumstances on all levels.

If the constitutional rights of the supreme organ of popular representation are extended—or existing rights are realized, parallel to this process—which means at least the restriction of over-centralization, a remarkable model emerges as a result. Now it becomes possible for the

supreme representative organ to pass skeleton-type laws on fundamental touching upon the largest possible field of social conditions, to establish and supervise the most important central state organs, to make the most important economic decisions (especially on the political level), and to supervise at least indirectly the implementation of them. If exclusive powers (and likewise matters of legislation) were clearly defined, the substituting organ could only assist the representative organ in realizing its supervisory and other functions. The position of the supreme administrative organ would be determined, on the one hand, by its key position in the preparation of statutes and in multi-grade legislation; on the other hand, by its national co-ordinating role, all the more so, since in the last decade not only the ministers, but also the heads of a number of national functional agencies were, pursuant to the constitution, elected. (Moreover, the presidents of the Council of Ministers of the union republics became members of the Council of Ministers of the Soviet Union.)

The task of co-ordination is actually an exquisite activity for a given organ of general powers; for a complete view of the whole field, and taking appropriate measures is the best way of control. I should like to mention, however, that this is not simply a case of co-ordinating the common tasks of two specialized branches. The range of co-ordination must be widened as strongly as possible. By employing this method, the planning-scientific organs can really become organs suitable for preparing scientific prognoses. As a consequence of decentralization, the ministries and other central administrative organs mainly exercise functional control in a model like this. That, on the other hand, supports the independence of economic and other organizations.

These are the conclusions we may draw from the development that has taken place so far in the socialist state-organizational models. The foundations of this model of highest level management are modern principles: the development of socialist democratism in the representative organs, the consolidation of the co-ordinating function, instead of the system of central instructions, the creation of the basis for scientific planning, the division of labour in legislation and in direction. Practically every socialist state upholds various elements of these principles. My summary regards rather their consequences.

Older forms of the unity of legislation and execution, of state authority and administration, can no longer be used. Its new content—if this expression may be used at all—consists in *the unification of the political and professional element in legislation; the multi-grade system in law-making, the division of labour and, on this basis, the establishment of rational methods; and, finally, the consolidation of the supervisory powers of the representative organ*—by the activation among others of its own institutions.

## THE MODELS OF LOCAL AND REGIONAL POWER ORGANIZATION

### 1. The Position of the Local and Regional Organs within the Constitutional Organization

Gurvitch, in his often-cited work,<sup>91</sup> shows in a very interesting way how the structure of the first Soviet constitution emerged, how the state-organizational scheme turned into its final form, how it changed from viewing local Soviets as the primary organs to stressing the fundamental state-power of the supreme organ, i.e. the all-Russian Soviet Congress, created also by its position in the constitution. This is the period in which the dispute whether a Soviet republic, or a republic of Soviets would emerge was finally settled. A decision for the former standpoint was favourable to the central direction executed by a uniform state-authority organization, to the sovereign rights of the supreme organs, to the delegation of powers; according to the latter scheme, some sort of loose federation would have been established of local powers and of the organs embodying them. The problem was especially perplexed by the uniform attitude which, at that time and even later on, envisaged the Russian-Soviet state in a federal form. This federative idea seemingly was not only connected with the nationality problem and its solution, but, due to the aversion from czarist centralism (and to a complete lack of central management at the first time of formation of the Soviets), the increasing independence of industrial plants, villages, towns, and, as a result, self-administration (self-government) became a central idea. Today it is clear to everybody that a "federalization" of this type would have been equal to suicide for the young Soviet state. This is why Lenin turned resolutely against the small local republics, or against the scheme of the draft constitution which, was otherwise historically logical. Undoubtedly, the reversal of the scheme, as well as its many later standpoints—such as the demand for a uniform supervision by the procurators' organization free from local influences—were intended to prevent the young socialist state from losing the advantages that are the result of the central structure of a unified state, and of uniform legality.

<sup>91</sup>Gurvitch: *op. cit.* p. 67.

The continuation of this tradition is, beyond doubt, the fact that the Soviet theory of constitutional law (and the theory of state in a number of socialist countries) has taken a most clear-cut stand for the unity of state organization which means partly the unity of legislative (state-authority) and executive (administrative) organs, and partly the organizational and operative unity of the central (supreme) and local Soviet organs (councils). Reference is made to Article 3 of the Soviet Constitution of 1936, according to which all power in the Soviet Union is vested in the working people of towns and villages who are embodied by the Soviets of the workers' deputies. The unity of the whole of the Soviet organization is therefore most clearly pointed out by the Constitution. Lepeshkin adds: "The organizational unity of state-authority organs in the Soviet Union finds expression also in the fact that they come into being and operate on the basis of uniform principles. A particular democratic form of activity is found on all levels of the Soviet system: the organization of work in sessions, forming executive and directive organs, of standing and temporary committees, etc."<sup>92</sup> It took a fairly long time to develop this interpretation of the unity of state power; we might as well say that there is no uniform opinion in the socialist countries as to such interpretation of this principle, and this is revealed already on the constitutional level.

Obviously, the position of the local organs, the possibility of their present and future operation, cannot be studied in an isolated way, even in the socialist countries of our days. It is interesting to note that the dispute of 1917-18 comes up again in our days, and that the existence, powers, and forms of operation of the local organs are again determined by two fundamental solutions. I might say with some exaggeration that the basic motive of this train of thoughts is whether the framer of the constitution was thinking of a *centralized* or of a *federal* state organization, i.e., wished to construct the given socialist state "from above" or "from below". (Needless to say that even the most extreme decentralizing constitutional models of our days bear no resemblance to the Social Revolutionary federative plan of 1917, or to other anarchist dreams.) Taking all this into account, we must conclude that two greatly dissimilar views are covered by the expression found in one of the recent socialist constitutions—the Rumanian one of 1965—which refers to the "unified state", i.e. to the exercise of unified state authority,<sup>93</sup> or Article 116 of the Yugoslav Federal Constitution of 1974 according to which "the Commune is a self-managing community and the most basic socio-political community based on the authority and self-management by the working

<sup>92</sup> (Lepeshkin, A. I.) Лепешкин, А. И.: *Курс советского государственного права* (Text-book of soviet political law), Vol. 1, Moscow, 1961, p. 200.

<sup>93</sup> Article 1 of the Rumanian Constitution.

class and all working people". The Czechoslovak National Committee Act of 1967 stresses—in accordance with an earlier party resolution—the development of the citizens' self-government, and this means that these organs must ensure the satisfaction of the prime necessities of the population in their field of activity.<sup>94</sup>

Nowadays, the problem of building up local and regional power is approached in the European socialist countries from two angles. On the one hand—even after enactment of the new constitutions—in most socialist countries the local and regional organization is *one of the parts of the uniform state-power organization* (or the part built up in the form of councils) and exercises the powers granted to it by central authority, mostly for satisfying the needs of the local or regional population.<sup>95</sup> On the other hand, the village is a basic community according to the Yugoslav model. The model of the Yugoslav federal constitution is built upwards from below, from the basic organizations of the so-called associated work through the community towards the autonomous province, the republic and the federation, by implementing the system of deputies.

First of all it is *questions of competence* that depend on both of these conceptions. For example, the regulations concerning the village (or town) ordinances is typical under the two conditions. According to Article 117 of the Yugoslav federal constitution, "the rights and duties of communities are regulated by the constitution and by local ordinances". The right of villages and towns to issue ordinances was declared for the first time by the Czechoslovak National Committee Act of 1967. Articles 25 and 26 of this Act declare the model ordinances issued by the Czech and Slovak National Councils to be directive in respect of village and town ordinances. (The model ordinance of the national committees of towns was approved in a very detailed form by the National Assembly on December 1, 1967.)

Thus the tendencies we have mentioned do not determine the scope of the powers of the local organs but they do determine (at least to a large extent) who is to define these powers, where the rights of the local organs (representative bodies and their organs) should originate from. Theoretically, three solutions are conceivable: (a) every jurisdiction should be regulated *centrally*, i.e., no *local* organ may exercise regulating powers and

<sup>94</sup>Article 2 of Act 69 on the National Committees of June 29, 1967: "As state organs of self-administrative nature, they connect in their work the satisfaction of social needs and the needs and interests of the districts of their region . . ."

<sup>95</sup>The views on the absolute power of the Soviets and of the councils of other countries held by Lepeshkin and by the Soviet theory of constitutional law, as well as by many socialist political scholars are characteristic. The subtitle of a work of Lepeshkin is this: "The Absolute Powers of the Soviets within the Limits of Authority granted to them by the Law" (Lepeshkin, A. I). Лепешкин, А. И.: *Местные органы власти советского государства* (The local power organs of the Soviet state), Moscow, 1967, p. 54.

those of a public agency without the consent of the central organs; (b) part of the jurisdiction—dissimilar proportions may emerge here—is regulated by the central organs, but tasks “*left open*” by the central organs, i.e. not affected in respect of powers, should be regarded as belonging to the jurisdiction of the local organs; (c) local competences are regulated by the *local legislation*, which—in essence—presupposes the division of authority appearing freely in the ordinances.

I do not doubt that none of these extreme patterns can be found in their pure form in the state organization of the socialist countries. Yet it is indisputable that the centralized constitutional model of state organization is more favourable to the solution which presupposes a predominantly central definition of local powers, while in the communal system of local self-administration the majority of powers is defined by ordinances. (This regulation of jurisdiction does not only raise the question whether the local organ possesses sufficient powers for the given degree, but also as to which organizational type is entitled to make decision in the given sphere, whether it is a representative or an administrative official organ.)

The question outlined above is actually a preliminary one, since it is only the rather vague outlines of the position and jurisdiction of the local and regional organization that can be defined this way. Yet, at the same time, without this, we cannot obtain an objective picture of the recent trends because these considerably modified the conceptions about local and regional organs, considering the not too detailed scheme of the Soviet Constitution of 1936. Today it is a generally known and recognized fact that the way of operation of the local and regional organs is a very important field of developing socialist democracy, and that, on the other hand, regional economic, cultural and social planning has increasing potentials in the case of well defined regional independence.

In socialist countries, however, not only the above-outlined and highly important difference—affecting the local model in its entirety—took shape, but also lesser or greater reform projects were realized by the legislation in recent years. These innovations can be best understood in the field of local legislation if we take into account the demand for a general renewal of the state organization in all the European socialist countries (and those outside Europe), and if we keep in mind that it is easiest to start reforms from this field. The first attempt to create a radically new local organizational model within a new state organization appeared in the Yugoslav Constitution of 1953. During the more than twenty years that have passed since, rarely a year passed without lesser or greater modifications in one or another European socialist country; new laws altering this organization were enacted. While, however, no modifications were made in 1957–1959, and the legislators rather tried to remedy

the inner contradictions and minor deficiencies of the former laws, i.e. went hardly beyond the conceptions of the Soviet constitutional model of 1936—apart from the Yugoslavs—considerable changes took place in recent years. Different forms of organization and jurisdiction were introduced practically in each country, attempts were made to place the legal regulation of the local and regional organization on new principles. I do not think that this conclusion is too bold: it is mostly in the legislation on local and regional organs that certain centrifugal tendencies, whose theoretical foundation is also remarkable, reveal themselves most clearly.

The good and poor results of these experiments will sooner or later strengthen the centripetal forces again. The results of useful experiments will in all probability be adopted by the legislators of other socialist countries irrespective of national boundaries, while the unsuccessful attempts will be discarded without national prejudice. This process, however, is still a hope of the future, since an evaluation of the experimental institutions would only be possible by means of exact political and sociological studies. Most of the valid statutes are all too new, the institutions are too recent to organize such a research project. The only exact study was the one that tried to establish the advantages and shortcomings of the old Polish Council Act.<sup>96</sup>

At present we therefore find dissimilar legislations in respect of local organization in the various European socialist countries. Statutes follow one another in rapid succession in certain countries. In Czechoslovakia, for example, the comprehensive legislation of 1960 was followed by a National Committee Act of entirely new approach in 1967; in the GDR the regulations of 1961 were in 1965 followed by a decree of the Council of State connected with the new economic system and dealing with the tasks and working methods of the local popular representations and their organs, and then by an act of 1973 on the organs of popular representation. In other countries, new statutes were framed after a longer time: in 1965, in Bulgaria, an instruction was issued by the National Assembly on the organization and forms of the work of the people's councils, followed by a resolution of the Council of Ministers in 1969 on the tasks and functions of the district and village people's councils and their organs, without invalidating an Act on the People's Councils of 1951 and amended several times, last in 1964; in the Soviet Union the statutes of the various republics issued between 1957 and 1959 were in 1968 followed by the law decree of the Presidium of the Supreme Soviet on the

<sup>96</sup>The theoretical foundations and investigation data were published by the Institute of Jurisprudence of the Polish Academy of Sciences in several volumes under the title *Problemy Rad Narodowych*, edited by S. Zawadzki, W. Sokolewicz and J. Swietkiewicz.



fundamental rights and duties of the village and settlement Soviets of the workers' deputies, by the resolution of the Presidium on the same issue, and finally by the resolution of the Presidium on the model regulation for the village and settlement Soviets of the workers deputies (April 8, 1968). These two provisions took into account the scientific debates according to which the earlier regulations had become obsolete and difficult to apply in practice under the changed circumstances; their basis was the resolution of the Central Committee of the CPSU in March 1967 on the "Improvement of the activity of the workers' deputies in village and settlement councils" which stressed the importance of the official powers on the lowest level of the Soviets, and the necessity of extending their powers. This was followed by a series of legislative acts about councils in the Federation and in the Republics. In 1971 an act was passed in the RSFSR on the town, town district and district Soviets; in the Armenian SSR in 1969 on the village and settlement Soviets, in 1971 on the town, town district and district Soviets, and a federal act was passed in 1972 on the legal status of the Soviet deputies.

In Rumania, in 1968, the Grand National Assembly passed a consolidated act on the people's councils, and in 1973 another act on the Popular Council Committee to control them. In Poland, the Sejm passed an act in 1972 on the formation of villages and an act on the amendment of the act of 1958 on the national councils. The legal material on councils was published with a unified text at the same time. The latest modification, bringing great changes, was effected in 1973; after this a unified text was published again. As concerns the Yugoslav form of regulation, the powers and organization of the local organs are regulated partly by the federal constitution and by the constitutions of the republics (as well as by the constitutions of two autonomous provinces, the Voivodina and Kosovo-Metoha) and partly by the ordinances of various villages. The contents of village ordinances are limited only by the legal compass resulting from the hierarchy of the sources of law. There are considerable differences between the various communal ordinances. There is no need for a detailed regulation of other local organization, because a sufficiently detailed regulation is to be found on the constitutional level if necessary, and because in the territory of Yugoslavia—apart from a few exceptions—there is no other regional unit or country district between a village and the republic.

In Hungary, Law Decree No. 8 of 1965 granted wide authority to the government to "temporarily regulate the powers, jurisdiction and operation of the local organs of state authority and their committees in certain fields to be specified deviating from pertinent Acts of Parliament", in order to lay experimental foundations for new provisions of law. On this basis, the government issued several orders in 1965 and 1967.

Finally, in 1971, the Hungarian Parliament passed a new act on the councils as a constitution act (Act I of 1971). According to this act, and to the Electoral Act III of 1970, the village, Budapest district, and town councils are elected by the voters by direct ballot, while the county and Budapest councils are elected by the enumerated local councils. No representative organ is instituted in country districts and town districts, but a specialized administrative agency is working there (as an organ set out of the given county or town council). The self-governing rights of the councils were laid down in the act. Council leadership was confirmed also by the fact that organs of specialized administration were subordinate only to the given council—and its executive committee—whereby the former dual subordination of these organs ceased to exist. The council organs were placed by the act under the direction of the Council of Ministers identical with the earlier actual situation.

As is seen from this brief survey, the position of local organs, of representative organs, of general local and regional administrative organs, and local and regional specialized administrative organs within the state mechanism was greatly influenced not only by a change in the basic attitude (building from above or below, and jurisdiction), but also by the modifications of statutes that have since taken place. For the purpose of our study, the position of this organization in the constitutional mechanism is of great importance. The position we are studying may be characterized from two angles: (a) what system of subordination has taken shape in the socialist constitutions and in other statutes; (b) what is in the jurisdiction of these organs, what checks and balances emerged in the local and regional organization—with special regard to powers and real decisions. It is actually these two determinants that influence the bulk of the organizational and operative problems of the local and regional organs.

Before dealing with this question, I must make two remarks. First I conclude that the development of the local authority organization of the Asian socialist countries did not considerably differ from the European in the last decades, except for the Chinese People's Republic where it is not possible to survey the changes in this field since the beginning of the cultural revolution, and where perhaps the greatest fluctuations and the attempts of local forces to create new forms of authority are seen just in this field. (The patterns of organization and competence of local authority in China differed even in the past considerably from what was elsewhere generally accepted, as a consequence of merging the people's communes, the local people's committees and the party organs.) My second conclusion is that in Cuba there is a complete difference in respect of local, as well as central organs. Just as no representative organs were set up in the national organization, the jurisdiction of the former governors and provincial councils, of the mayors and town councils were taken over in

the provinces and municipalities by one, or three commissioners appointed by the minister of internal affairs. Thus, even in this field, no representative organs were set up. (Acts 36 and 37 of 1959.) This model has been recently undergoing certain changes (for example, elections were held in a few territories).

The changes in the position of local organs need not be surveyed historically, since they were often influenced by the internal situation according to the situation of war and peace. The Soviet organization deserves our attention in two phases: at the very beginning, and at the phase of the 1936 solution, since the influence of these two solutions in the entire socialist development cannot be denied.

We are sometimes faced with misunderstandings, even in everyday debates, concerning the allegedly anarchic evolution of the Soviets of 1917–1918. It is certainly true that these organs, especially those remote from the central state power, emerged rather spontaneously, particularly in the second half of 1917. Their organization, and the powers they exercised, were varied, as a result, in accordance with the education and political maturity of workers and other working people in the respective regions. But, as we have seen in the preceding chapters, the Bolsheviks, or at least the majority of the party leaders, rejected the SR and anarchist interpretations of the “federalism”, and wanted a higher degree of centralization in that revolutionary period. The given degree of centralism was of course not independent of the domestic and international situation. I should by no means give the impression as though I regarded this centralization as some kind of static phenomenon; but it cannot be doubted that Lenin and the Bolshevik leadership did not want any anarchic decentralization of the local Soviets, and to reduce thereby the striking power of a revolutionary state.

The first sign of this was the decree on the “Fullness of the authority of the Soviets” issued on November 8. The contrary would seem to appear from this title, but the fact is that the central control of the local organs was first established by this decree on the morrow of the revolution. This decree, consisting of only three sentences, in its first half deprived the commissars of the provisional government of their power. The last sentence subordinated the presidents of the Soviets directly to the Revolutionary Government, i.e. the first directive basis of the Soviets was created in the Council of the People’s Commissars. Then, after the first stabilization of power relations, on December 24, 1917, the People’s Commissariat of Internal Affairs “requested” the Soviets of the Workers’, Soldiers’, Peasants’ and Poor Peasants’ Deputies to maintain contacts with the said commissariat, because “it is the duty of this commissariat to unite the activities of all organs of local administration which are now the Soviets”. Accordingly, central control over the Soviets was the responsi-

bility of the People's Commissariat of Internal Affairs, and, moreover, this was declared by the first comprehensive statute on the organization of the Soviets. (Similarly to most decrees, or statutes of any other name, this provision did not address the local Soviets in the earlier, customary "legal parlance"—it rather requested them, willing to succeed by persuasion; but this was not unusual at that time, and had its desired effect.) This first stage of the Soviets' history shows that centralized Soviet power did not give up controlling the Soviets on all levels, did not want to issue merely general norms in the constitution, in acts and other statutes, but wished to direct them by orders and instructions issued for given cases. The question that problems may be connected with individual control was not raised at all. What might seem peculiar is that this right was vested in the People's Commissariat of Internal Affairs in that period. This, however, was a European tradition—so to say—in the former czarist administrative system, namely that the ministry of home affairs was at the same time the governmental supervisory organ of the local self-governments.

Let us now jump over almost two decades. Although the 1936 Constitution of the Soviet Union was rather laconic as concerns the control of the Soviets, it was here that a specialized and well-arranged state organization emerged which offered the possibility of similarly specialized forms of direction. (Article 101 of the federal constitution mentioned only in connection with the dual subordination of the executive organs that "the executive organs of the Soviets of Working People's Deputies<sup>97</sup> are directly accountable both to the Soviets of Working People's Deputies which elected them and to the executive organ of the superior Soviet of Working People's Deputies".) The constitutions of the Union Republics following the Federal Constitution of 1936, such as the Russian Constitution of 1937, set forth the various elements of direction more in detail. Item /g/ of Article 33 of the constitution authorizes the Presidium of the Supreme Soviet of the RSFSR to "... annul the decrees and resolutions of the *krai (oblast)* Soviets of the workers' deputies, and of those of the autonomous territories, if they are contrary to the law". And, according to Article 46, the Council of People's Commissars may annul the resolutions and decrees of the executive committee of the *krai* and *oblast* Soviets, and those of the autonomous territories and may suspend the implementation of the resolutions and decrees of Soviets acting on the same level. The dual subordination of the executive committees was provided for by Article 89 of the same Constitution; Article 90 declared the right of the superior

<sup>97</sup>Here the constitution speaks only of the executive committees, of the president of the Soviet in smaller settlements, of his deputy and secretary, which means that specialized administrative organs do not figure on this constitutional level.

executive committees to annul the resolutions and decrees of lower executive committees, to suspend the implementation of the resolutions and decrees of Soviets active on a lower level. According to Article 91, the superior Soviet may annul the resolutions and decrees of the lower Soviet. Article 94 declared the dual subordination of the sections of the executive committee of the *krai (oblast)* Soviets, Article 98 that of the *rayons*. Article 100 of the town, and Article 101 of the Moscow and Leningrad Soviets, i.e. the dual subordination of the specialized administrative organs of these (to their own Soviet, viz. its executive committee, and to the superior organ of specialized administration).

It was this structure that shaped the "classical" Soviet structure after 1936: separation of the state authority organs from those of state administration, as a consequence of which the organs of state authority and representation could operate—in principle—only subordinated to higher level organs of state authority and representation. In this way a structure emerged in which the chain of state authority was uniform, beginning from the village and settlement Soviets up to the Supreme Soviet of the Soviet Union and its Presidium. No organ of state administration was allowed to participate in the practical direction of the organs of state authority. We must, however, make two remarks in this connection:

(a) It had to be permitted on the constitutional level even in this separated system that specified administrative organs would be able to suspend the implementation of the resolutions and decrees of the local organs of state authority (the constitution does not declare that the resolution or decree to be suspended must be one violating the law, which means that even an inexpedient norm may be suspended). Such suspension is not of final nature, of course, but in most of the cases it becomes final.

(b) It is self-evident in this model that the norms issued by the organs of state administration are of universal validity, i.e. are binding also on the local organs of state authority.

As concerns local Soviet administration, the constitution further divided and subordinated organs of general competence only to organs of similarly general competence. This means that the executive committees were subordinated to executive committees of higher level in the highest instance to the Council of People's Commissars. The vertical subordination of the specialized administrative organs pointed towards the higher organs of specialized administration, in the last instance to the respective People's Commissariats (or other special central administrative organs).

The constitutions provided for dual (vertical and horizontal) subordination both for the organs of general competence and organs of specialized administration, by which it was intended to ensure the possi-

bility of specialized, professional direction and of local, democratic direction alike.

This was the scheme which was included to a lesser or greater extent in the constitutions of the 1940s, and of the first half of the 1950s. There were also minor divergences: Article 27 of the Polish constitution of that time declared, for example, that "the Council of State exercises ultimate supervision over the People's Councils", while, according to Article 32, the Council of Ministers "directs the work of the Presidia of the People's Councils". The same scheme was included in item e) of paragraph /1/ of Article 20 of the Hungarian constitution in connection with the powers of the Presidential Council of the People's Republic, and other provisions of the constitution, as well as Act X of 1954, have built up this "pure", i.e. separative system and its principles.

If, however, we study the constitutional models that took shape in the 1960s, the picture we see is by no means uniform. Although the Mongolian constitution of 1960—item 9 of Article 34, item 9 of Article 41, Articles 57–58 and Article 61—contain provisions greatly resembling the Soviet constitutional solution, the Rumanian constitution of 1965 continues to build up an extremely specialized subordination (Article 43 item 19, Article 64 item 6, Article 77 item 11, Articles 99 and 100), and introduced even greater changes. (An act was passed in 1973 which entrusted the Committee of People's Councils with manifold tasks in directing, orienting and supervising the people's councils. This Committee is an organ of the party and the state; its composition is approved by the Central Committee of the party, by the Council of State, and the Council of Ministers. It has a permanent apparatus of its own, together with subordinate institutions and organs. Generally speaking, statutory and other changes took place in recent years which fundamentally influence the articles of the constitution defining the control of the people's councils. We shall deal with this later as an altogether different model.)

The Czechoslovak Constitution of 1960 and the National Council Act of 1967 seek different solutions for controlling the national committee system. It is an important feature that this model does not deem it sufficient to control the local organization only by legal provisions, but provides for other forms of direction as well. Article 48 of the Constitution—which has been repealed since then—stated that "the National Assembly, as the supreme representative body in the Republic, shall consider the suggestions of the national committees, discuss their activities, draw general conclusions from their experience, and pass measures to improve their structure and methods of work". So this is still a normative activity, but already a result of operative preliminary activity. The idea stressed in Article 96 of the Constitution is very important:

national committees of higher level control those of lower level on condition that "they shall respect their authority and responsibility". This, of course, presupposes the definition of the jurisdiction and their exclusiveness. The National Committee Act clarifies also the form of direction. The following ways of control and direction are made possible by Articles 66-68 and 71: (a) the respective (Czech or Slovak) *National Councils* regulate their powers, competence and organization by Acts, their working methods by resolutions; (b) the actual controlling organ of the national committees is the *federal government* which directs the principles and practice of the operations of the national committees, i.e. of the representative organs and their councils (that can be preparation of the state plan and budget, deciding questions of principle in state administration, settling disputes between district national committees and ministries, supervision, etc.); (c) *the ministry of the interior* is the organ of the government in this respect (a co-ordinating organ, drawing up proposals to the government); (d) *the ministries* (central administrative organs) issue compulsory legal provisions for the respective branches, and guiding principles in matters coming under the independent jurisdiction of national committees; (e) the *national committees of highest level* direct, supervise and organize the activity of national committees of lower level leaving their powers completely intact.

As is seen, the position of the Czechoslovak national committees is characterized by the fact that they are directed by general norms for the most part; yet the forms of individual direction are not given up, only the inviolability of jurisdiction was pointed out on every level.

The Yugoslav regulation differs from all this and points out the *independence of the village (community)*. The so-called operative forms of direction are therefore removed from the model both by the constitution and the communal ordinances. The constitution expressly states that the rights and duties of the community (including those of the communal organs, of the communal *skupshтина* first of all) are regulated by the constitution and by the communal ordinances (Article 117).

Thus the Yugoslav local organizational model is at the other pole, opposite to generalization of operative direction.

Now we must return to the Rumanian problem already mentioned. As I have said, the original Rumanian model was changed first not by a comprehensive, new act on the people's councils, but by a resolution passed at the national conference (in December 1967) of the Rumanian Communist Party and by the acts adopted as a consequence; they dealt with the administrative organization of the territory of the republic, and provided for local state control in administrative-territorial units until the election of the people's councils. The new act was adopted in 1968. But a few questions were expressly not included in this act.

The conference of 1967 laid down several basic principles for future legislation. The first problem of these, the transformation of the local state organization, was regulated by an act to the effect that the three-stage system was replaced by a two-stage system (on February 17, 1968). From that time on, the territorial division will be by communities, towns and counties. The constitution amendments also restored the dual subordination which had been greatly limited in the past.

But the most important basic principle, not laid down formally in statutes so far, is that the first secretaries of the county and town party committees will be hereafter elected the presidents of the county and town people's councils. Certain secretaries and other party functionaries will be in charge of leading functions in the local organs of state administration. Economic committees will be set up under direct control of the county party committees to attend to co-ordinating tasks on the county level. Ideological-cultural activities will be directed by regional party organs.<sup>98</sup> This considerable change in the structure of local organs is connected with the modifications that took place on the level of the central organs. All this may entail the following consequences: (a) *subordination* is established now through the person of the president not only to the higher state organs, but also to the higher party organs; (b) in some specified fields *the people's council organs do not function*; the performance of these state tasks was taken over by party organs; (c) the existing model of *supervision* and *direction* ceased to exist as a matter of necessity and was replaced by an entirely new one. Thus it was exactly the position (control, direction, sub- and superordination, and—as it appeared—the jurisdiction of local representative organs of state authority) that was changed by this resolution and its consequences.

The GDR Constitution of 1974 says nothing substantial about local popular representations and their position in the state mechanism. According to Article 70, the Council of State supports the organs of local popular representation as organs of uniform socialist state authority, promotes their democratic activities, and influences them in order to observe socialist legality; and, according to Article 78, the Council of Ministers directs, co-ordinates and supervises the activities of the district councils (executive organs). But further hierarchical problems of the model are not dealt with.

Finally, we must turn to a few characteristics of the changes in the Hungarian model of councils. It must be admitted that the form of dual subordination that developed in Hungary was for a long time the method of petty instructions in professional direction. In accordance with detailed

<sup>98</sup>Report of Nicolae Ceaușescu at the national conference of the RCP, *Előre*, December 7, 1967, pp. 6–7.



plan instructions, professional direction did not choose a long-range type of guidance by norms and statutory provisions of general validity, but rather decided for the method of instructions which, perhaps, was quite sensitive in its reactions, but was uncertain and had no grasp of the future. The reform of the economic management tried to replace the instructions of plan break-down by prognoses better supporting independence and having a broader outlook at the economic tasks of the future. This was one of the reasons for a frontal attack against dual subordination. It was completed by the notion that it was possible to develop further and to improve horizontal subordination on all levels of the local organs.

The first change of major importance in the position of the Hungarian council organs was introduced by government resolution No. 1023/1967. The *dual subordination* in the direction of specialized administrative organs ceased to exist in its earlier form. The Council Act I of 1971 was passed after this. This Act entrusted the *parliament* with the definition of the basic rules of the principal tasks, organization and operation of the councils, with the supervision of law enforcement. The constitutional supervision over the councils is exercised by the *Presidential Council of the People's Republic*. The councils are directed by the *Council of Ministers*, with the co-operation of its Council Office in cases defined by statutes. *Ministers may* as a rule regulate the specialized administrative activity of councils only by means of statutes dealing with matters specified in acts of parliament; they may issue direct instructions only on the basis of statutory authorization.

All this shows that dual subordination was reduced in operative respects and that the possibility and importance of direction through statutes and norms was recognized also in the Hungarian council system. Branch control was not abolished at the same time, only its course was changed considerably. We may not say that this resolution abolished operative control; this form of direction passed into the hands of the executive committees.

The position of the local and regional organs in the state organization may be determined in two ways. In considering the unity of the power organization we looked at the regional and local organs as a unity, as a *non-central* organization. Doubtless, regional and local organs have features which, compared to the central state-authority and administrative organs, are uniformly characteristic of them. Such a feature is, first of all, that they do not represent the power of the entire population of the country, but the will of the population of a given territory, i.e. *regional* and *local interests*. On the other hand, and just for this reason, all these organs have—irrespective of their level—an “*executive*” function which results from the circumstance that, constitutionally, they are subordinated to the national organs and must co-operate with them among others in

performing the obligations assigned to them for realizing national tasks. The regional and local organization, which is composed of regional and local representative bodies and of the organs created by them directly or indirectly operates in more or less identical organizational forms, no matter whether it is built up from above or below. The demand detectable in constitutions and laws, namely that a uniform sphere of tasks should be assigned to these organs, proves again that the regional and local organizations do have common features, as last resorts of the unity of the organs of state power.

Yet, at the same time, there are many other features that separate the regional and local organs from one another. What is actually characteristic here is that the demand has existed from the first moment of the emergence of the Soviet system to build up these organs of the power of the proletariat into national organs, establishing the Soviet organs for accomplishing the tasks coming up in traditional or newly established administrative units. Naturally, the problems coming up in Russia in the village and town Soviets were not the same as those at the Soviet congresses of the large provinces, let alone their executive organs. "Local tasks" evidently have different meanings for communal units and for intermediate organs of any name where the co-ordinating powers are formed comprising the settlement units or where—owing to the relative smallness of communities, the industrial-organizational apparatus must be organized comprehensively on a higher level.

The history of the socialist state apparatus warns us, too, that this difference must always be sized up, and that a distinction must be made between the organs of various levels, their powers, importance and organization. While the role of the first, lowest level Soviets was the most important in Russia at the time of the socialist revolution, the intermediate Soviet organs of the *raion* level, which had the most direct connection with agriculture, became the most important organs of Soviet power during the collectivization of agriculture. It is characteristic that, after 1949–1950, especially in Poland and in Hungary almost all small settlements got the rank of village. Since in these units the councils had no other tasks but to promote state purchases and the payment of taxes, practically all powers went over to the local organs of district level. This, of course, led to the centralization of powers, but changes took place here too, after the abolition of overcentralization. The other instructive example is the history of the districts in Yugoslavia. Originally, these units were created and maintained as intermediate social-political communities for co-ordinating villages, organizing their joint enterprises, and assisting in the organization of administration. Article 105 of the Federal Constitution of 1963 stated that a district is a community formed for managing the matters of common concern of two or more villages

while at the same time the decision of the question whether it is necessary to form a district in a given republic was left to the constitution of the republic. Yet the actual situation was that no new districts were formed, but existing ones were abolished in most regions, and villages were merged to form communities of large size and population. (The number of communities was reduced from 11,556 in 1946 to 3,912 by 1954, to 818 by 1960, and to 518 by 1963.)

The shifting of emphasis in the development of the Soviet and council organization is inevitable at the time of great social and political changes; but *a more permanent division of labour* can be introduced in the period of stabilization. One of the factors of developing socialist democratism is to bring decision-making as near to the local population as possible, and to guarantee adequate powers to the organs of real social communities, i.e. to the village and town representations and the pertinent apparatus. On the level of intermediate representative and administrative organs, it was recently necessary to extend powers in the planning and economic field and in co-ordination.

The Hungarian Council Act of 1971 drew a distinction between *local* (village and town) and *regional* (county) councils; this means that local interests must be expressed and realized by organs which are truly local.

The trend of the past years in the majority of the European socialist countries is an *increasing interest* shown by legislative and political public opinion *in the organs of lowest level*, i.e. *village and town organs*. This is expressed by the resolutions of various party forums in these countries, and also pertinent statutes were framed in increasing numbers. For example, a resolution of the Central Committee of the CPSU, passed in March 1967, stated the following: "It shall be ensured that the influence of the village and settlement Soviets is increased in the development of the kolkhozes and sovkhoses, of local industrial enterprises, trade and public services in order to utilize all local potentials and resources more fully and promote industrial and agricultural production."<sup>99</sup> A more clear-cut formulation can be found in an article based on a highly valuable exact study project conducted in the Estonian SSR: "The question of consolidating the role and activity of village Soviets, of extending their powers at the expense of the district level... has now come to the fore..."<sup>100</sup> And that this policy was fruitful appears from the fact that on April 8, 1968, the Presidium of the Supreme Soviet of the Soviet Union passed two highly important decisions: a decree on the fundamental rights and duties of the village and settlement Soviets (their sphere

<sup>99</sup> *Pravda*, March 11, 1967.

<sup>100</sup> "Какими должны быть законы о местных Советах?" (What should be the laws passed in connection with the local Soviets like?) *Советы депутатов трудящихся*, 1966/8, p. 46.

of tasks and exclusive powers were regulated separately), and a resolution on the model statutes of village and settlement Soviets (the pertinent acts of the republics were passed in 1969). Naturally, in the new Soviet Constitution the interest taken in the Soviets of the lowest level is not to be felt, because on this level only the equalizing model of organization is imaginable.

Concerning Czechoslovakia, a resolution of the 13th congress declared that "in order to make our towns and villages prosper, we must resolutely increase the role of the national committees of towns and communities, must extend their powers, must enhance their independence, enrich their financial resources, and broaden their material-technical basis."<sup>101</sup> The same resolution recommended to restrict the operative activity of the district national committees. Article 25 /1/ of the National Committee Act of 1967 which gave a general definition of the tasks for the communal national committees corresponds to this decision: "The communal national committee shall provide the conditions for satisfying the lawful needs and interests of the citizens . . . shall organize the development of the village . . ." etc. Article 26 /1/ enumerates the following tasks for the national committees of towns: co-operating in the systematic development of the town and in the decisions on areal proportions, the organization of town-planning, the provision of hygienic living and working conditions, the development of cultural and political work, the protection of public order and the rights of the citizens. This Act clarified in an exemplary way the principles of the fundamental tasks for the two national committees acting on the higher degree, the district and regional committees. (We shall come back to these later.)

Recent Rumanian legislation similarly placed the emphasis on the people's councils of villages and towns. It was stated already at the national conference of 1967 that the villages and towns " . . . are the basic units of regional-administrative organization in which the citizens display their economic, political and social-cultural activity. . . . The villages must be developed into powerful administrative units so that they provide a suitable basis for the utilization of the material and human resources of the community."<sup>102</sup> Article 5 of the Act of February 17, 1968, on the administrative areas of the territory of the Rumanian Socialist Republic stated that "the economic, social-cultural and farming development of rural localities shall be ensured by organizing communities"<sup>103</sup>. By changing the former three-grade (province-district-village) system into a two-grade (county-village) system, an intermediate organ—the district

<sup>101</sup> The importance of the resolution was that it vigorously emphasized the aspirations for decentralization.

<sup>102</sup> *Előre*, December 7, 1967, pp. 5–6.

<sup>103</sup> Namely as the consequence of merging the former villages.

people's council which took away many functions from the villages—was eliminated, and greater emphasis was placed on the villages and towns. This is mentioned also in Articles 17 and 18 dealing with the authority of villages and towns in the People's Council Act of 1968. I do not wish to point out again the special features of the Yugoslav model—it is only natural that the consequence of this is a very wide range of communal powers.

The Constitution of the GDR—without showing, for the time being, any reflection of this in the statutes on popular representation—devoted a special chapter to such basic institutions as industrial units, towns, villages and village associations. According to Article 43, the towns, villages and village associations work for satisfying the citizens: material, social, cultural and other needs, and co-operate for this purpose with the production units and co-operatives of the given region. The Act then states: "The responsibility for the performance of the social functions of towns and villages shall be borne by the popular representations elected by the citizens. These reach decisions in their matters independently, according to the laws . . ." (The constitution contains no similar enumeration of tasks in respect of the popular representations of other regional units such as the representations of districts and regions.)

The importance of village and town organs, i.e. the basic local organs, has recently been emphasized in the legislation of the socialist countries for various reasons. The demand, however, that the organs of the state should get into contact with the population as directly as possible appears everywhere. The consolidation of communal powers therefore acts in this direction of developing socialist democratism. On the other hand, we must keep in mind that in the majority of the European socialist countries these communities are no longer the smallest settlements, but are the *unions* of such settlements and villages which embody a higher degree of co-ordination of local interests. What we see here is to have, or at least the intention to establish viable regional units capable of self-administration and having adequate financial basis.

The extension of the powers of villages (towns) does not mean that it is planned in the socialist countries to abolish simultaneously the powers of the state organs of other regional units, not even in the long run. Along with the line mentioned, the maintenance and expansion of the *co-ordinating and planning* authority of organs on the intermediate level — whose number is decreasing as a rule — assumes considerable emphasis. The theory of constitutional law and also constitutional legislation made attempts in practically all European socialist countries to define the corresponding powers of higher popular representation and its organs.

In the Polish literature, Rybicki discussed this question among others on the level of the voivodship people's councils. He pointed out

especially the co-ordinating role of these organs in reconciling general state interests with local ones, as well as in economic planning, the drawing up of plans, and shaping the lines of production.<sup>104</sup> Point 1 of Article 14 of the Polish People's Council Act of 1958 pointed out the co-ordinating role of voivodship people's council in connection with the people's councils of district authority; at the same time this Act indicated that the process of decentralization must not stop at passing down the powers of central organs. Articles 15 and 20 of the Act declared—as a rare exception in socialist countries—the right of subdelegation for the people's councils of voivodships and districts. (“The people's councils of the voivodships may . . . transfer their responsibilities to people's councils of the next lower degree, in accordance with the guiding principles issued by the council of ministers in agreement with the Council of State; such transfer shall take place with the consent of the people's council which has to take over the task, with the simultaneous handing over of the means required for accomplishing the said tasks.” This right of the district people's councils was formulated similarly, with the addition that the consent of the people's council of the given voivodship is required here.) All this supports the trend that the powers of the intermediate local organs are “filtered out” all the time and that operative powers keep vanishing as a result. I must mention, however, that this institution of subdelegation in Poland failed to produce the expected results. The National Committee Act of 1973 abolished the districts and nearly trebled the number of voivodships thereby attempting to strengthen the leading role of the latter. (In the voivodships just like in any other councils the president of the council is the first secretary of the respective committee of the Polish United Workers' party.) This model has been maintained by the 1976 Constitution.

The Czechoslovak National Committee Act of 1967 made considerable modernizing especially in respect of the regional national committees. This organ ensures the proportionate regional development, works out regional development plans by laying down the proper proportions. It is quite clearly diverted from operative work: “The regional national committee shall focus its attention . . . first of all on the definition of *fundamental* tasks, on the solution of questions of *principle*, by exercising state administration.” (Paragraphs /1/ and /3/ of Article 28, italics are mine, O. B.) As concerns the district national committees, there are more direct operative tasks, but paragraph /3/ of Article 27 declares that “it shall co-operate with the regional national committee in defining regional proportions and in shaping the policy of district development.”

<sup>104</sup>Rybicki, Z.: “Niektóre zagadnienia dalszego rozwoju systemu rad narodowych w PRL,” (Some questions of the system of people's councils in the Polish People's Republic) *Nowe drogi* 3/1965, pp. 31–32.

The Rumanian act of 1968 on regional development terms the county (i.e. actually the only intermediate regional unit) in connection with the novel regional division—"the basic unit of the country's administrative-regional organization", i.e. a unit composed of towns and villages, which emerges depending on the geographical, economic, socio-political and ethnic conditions, of the cultural and traditional relations of the population (Article 3). According to the preamble to the Act, "the harmonious development of towns and villages from the points of view of economy, socio-cultural and urban development and management" is ensured by the organization of counties. This means that the county was conceived as a co-ordinating and planning organ.

We may therefore say that we see a dual line at the council organs of various levels in the development of the past years: (a) a clarification and expansion of the competences of the organs of the *lowest* level, i.e. village and town organs, in the field of satisfying *local demands* and *local development* problems; (b) a purification of the competences from operative activity, a shift to co-ordinating and planning competences in the intermediate, regional organs. If we try to formulate this new line in a clear-cut manner, we might say that the possibilities of a "more genuine", i.e. more directly perceptible local democratism are discovered in the villages and towns, where no attempt was made to solve the problems by central intervention. Not even to the extent that higher, but not central, organs take over certain rights. On the other hand, the powers of the intermediate organs being shifted to professional, specialized, co-ordinating and planning tasks, the role of their representative sections is diminishing. It is on this level that the first clash between the democratic possibilities of the representative organs and the specialized decisions of the professional agencies begins. Experience shows in almost every European socialist country that the importance of the executive organs grows on the intermediate level as the specialization of the various tasks increases. The activity of the representative organs decreases at the same time; the number of the real decisions of the representative organs is low, and their work loses some of its importance as a rule. In my opinion, this shift of proportions is justified, and we must draw the proper conclusions from it. Such conclusion is that the political element should be stressed at the intermediate representative organs in the same way as at the supreme ones. What these representative organs must therefore strive for is to take part in the shaping of the necessary policy and to ascertain that the professional decisions of the executive-administrative organs be in conformity with the established political objectives.

If, therefore, we study the position of the local and regional organs in the state mechanism, we must say that this position is primarily influenced by the *relationship* existing *between local-regional and central*

*organs*. The question arises in this relation what competences are passed on by the central organization, mainly—and in principle—by the supreme representative organ. The unity of the national and the local-regional organization is therefore manifest only in the unity of the class-will represented by them; however considerable the agreement of organization or working methods be, it does not determine this relationship. On the other hand, in respect of local, regional organs we cannot speak of the primacy of unity either. In the socialist legislation of the recent years the modern experiences of building a state indicate that even if the structural model of the local, regional organs is uniform in most aspects (i.e. what types of organs work within the framework of the general apparatus, what is the main working method ordered for them by statute, the general scheme of election, appointment, recall, system of responsibility, etc.) this organization is split up by the most important question. The attempts made at the definition of the principal tasks for the lower- and intermediate-level organs prove in almost every European socialist country that the further forcing of "unity" stiffens, even paralyzes the activity of the representative and administrative organs on all levels instead of recognizing the specified powers that emerge on the different levels. I might add that the poor and inconsistent division of labour (arrangement of competences in the last analysis) at the end, supports centralistic trends by which the activity of local organs is rendered impossible. Therefore, it is important to recognize the different "natures" of the various local and regional organs, and to separate them on this basis in the constitutional model in accordance with up-to-date requirements.

The uniform structure was broken up in a variety of ways by the Hungarian Council Act of 1971. The local and regional (intermediate) council organs were clearly distinguished by the different names, but mainly by the separation of their functions. In the districts only a specialized administrative organization was established, indicating that in these regional units only an administration which supports and assists the local council organization is necessary, and there is no need for the expression of particular regional interests. Finally, the fact that only the local councils are elected by the voters directly according to Act III of 1970 (the Electoral Act), while the county councils are elected by the village and town councils, gives expression to the circumstance that the interests of the local population are protected by the local councils, while the county councils are the representative organs of the villages and towns.



## 2. Questions of the Jurisdiction of Local and Regional Organs

The problem of jurisdiction was studied from several angles in the socialist literature of political science. The first set of problems was how the jurisdictions can, and must, be defined. A well-known standpoint, which came up repeatedly both on the constitutional and statutory levels during more than fifty years, is that, owing to the frequency of socio-political changes, it is not possible to lay down definite jurisdictions for a longer period. In spite of this standpoint, there would have been possibility for reassigning jurisdiction from time to time: some theoreticians objected only to a too firm determination of the rights of various state organs on a high statutory level and for a longer period.

When this question came up again in the early 1960s, Hungarian legal scientists studied this problem mainly in respect of the highest state organs, while the same question was studied in respect of the local organs especially by Soviet, Czechoslovak and Polish scholars. The opinion of the scientific community underwent a radical change in the past years. To lay down the jurisdiction on the various levels as accurately as possible, is now held not only possible, but necessary. (I do not bring up again the competence problems of representative bodies; I have presented the pertinent Hungarian views in detail in my earlier work.)<sup>105</sup>

The theory of constitutional law in the European socialist countries today seems to be uniform in the demand to define the jurisdictions, moreover, in such a way that certain powers be fixed on the level of a given local organization in an "exclusive" way and no other local or central organ be able to exercise them. What such a power should be called (in Soviet literature Lazarev terms it exclusive, Sheremet extraordinary, Peška calls it the most important rights to be exercised; in my opinion the term "*exclusive rights*" is the most appropriate), and whether this arrangement of powers should only distinguish the organizations on different levels or should apply separately, to representative and executive organs is still open to many theoretical debates. That legislation, apart from these debates, has already taken its stand in practically every country, is another question.

Soviet research into constitutional law holds the uniform view that the earlier uniform and general definition of tasks must be abandoned in the course of regulation, and that a division of powers must be worked out as precisely as possible both vertically (i.e. between the Soviet organs of different levels) and horizontally (i.e. between the Soviet plenum and its organs). In his study written in 1964, Lazarev expressed the view that "it

<sup>105</sup> Bihari, O.: *Socialist Representative Institutions*, Budapest, 1970, pp. 187-194 and pp. 212-213.

would be advisable wherever possible, to set the aim of the extension of the *exclusive* jurisdiction of all organs, and to increase thereby the responsibility of the functionaries of all organs for fulfilling the tasks entrusted to them", since, as opposed to the method employed so far, it is not enough to name the functions, but concrete jurisdictions must be devised.<sup>106</sup> Sheremet, in one of his studies, similarly objected to the unregulated state of jurisdictions as a result of which the activity of the Soviets decreased, and sessions became less frequent. He says: "The exclusive powers of the Soviet should be defined as precisely as possible through their considerable extension and also the rights which are directly exercised by the executive committee."<sup>107</sup> He says that a catalogue of tasks which he calls extraordinary had already developed by that time, but they were exercised by the village Soviets insufficiently. He made an enumeration of them (in 26 items) which contains the establishment and dissolution of their own organs, ordering them to render account, the determination of the character and composition of these organs, the approval of cultural-social plans, of the annual and long-term plans of subordinate plants, institutions, organizations: the approval of plans on the realization of electoral mandates, of the plans for inhabited areas; the adoption of the budget and the report on its implementation; the adoption of the reports of social tribunals; the adoption of the suggestion of superior organs on the modification of boundaries, on the transfer of the seat, on the changing of the name of inhabited localities. Sheremet also suggested that the making of norms in the local Soviets should be concentrated in the hands of the plenary session of the Soviet and the right of norm-making be withdrawn from the executive committee. (In his opinion, the making of norms is never so urgent that it could not wait for the plenary session of the Soviet).<sup>108</sup> As regards the question, where substantial powers must be granted first of all, Soviet literature on constitutional law took a clear stand. Kirichenko, for example, tries to define the developmental trend of the Soviets' jurisdiction as follows: "It seems to be a rule that in the further development of socialist democracy the Soviets should exercise the functions of state authority more and more directly or through their permanent organs while the role of their subordinate executive and administrative organs is gradually restricted."<sup>109</sup>

<sup>106</sup> (Lazarev, B. N.) Лазарев, Б. Н.: "О компетенции органа Советского государства", (On the competences of the organs of the Soviet state) *Советское Государство и Право*, 1964/10, p. 51 and 41.

<sup>107</sup> (Sheremet, K. F.) Шеремет, К. Ф.: "Вопросы компетенции местных органов", (Problems concerning the competences of local authorities), *Советское Государство и Право*, 1965/4, p. 24.

<sup>108</sup> *op. cit.* pp. 26-27.

<sup>109</sup> (Kirichenko, M. G.) Кириченко, М. Г.: "Советская социалистическая демократия. пути и формы ее развития" (Soviet socialist democracy: courses and forms of its evolution) *Советское Государство и Право*, 1965/11, p. 131.

In Czechoslovakia the principle of the unity of decision-making and execution—from the period when the constitution of 1960 was prepared—was interpreted in the sense that a separation of state authority and administrative functions is unnecessary and not even useful. The powers of the representative organ were conceived of as the unity of the plenum and its executive and other working organs. At the same time, the scholars of constitutional law had indicated the necessity for an exact plan of the division of labour, quite early.<sup>110</sup> Later on, this tendency became still clearer. Peška in 1966 suggested granting the following most important rights to the representative bodies as political state organs through the division of labour, without making any distinction between the national committees of different levels: drawing up long-term plans and the budget, adoption of basic complex resolutions, and public control.<sup>111</sup>

Scholars of constitutional law in Poland used the help of sociology in studying the people's councils. The jurisdiction of these councils were studied by the methods of political sociology. Zawadzki in a brief study of that findings pointed out that the jurisdiction of the people's councils and of their presidiums had not become separated from one another, so it is time to clarify them. He also assessed the real proportions that appear in the resolutions and suggested new measures. "It is clear," he writes, "that, compared to economic problems, social-cultural affairs are much less clear-cut in the councils' resolutions. This is the case especially on the village level where the number of resolutions on questions of health, education and culture is actually insignificant."<sup>112</sup> Interestingly, it is not the problem of *principles* of jurisdiction that was raised by Polish literature, but rather that of practical exercise. This clarified at the same time the question of legal regulation, regarding the fact that the powers of the representative organ and its executive organ and of the presidium were also not separated during the regulation in 1958. On the other hand, the powers of the national councils were described in general on a very wide range (including the rights of the entire organization). According to the new Constitution and the law of 1973, the powers of the national councils became separated from those of both the presidium and the local (territorial) state administrative organs. This is all the more so since the separated subordination of the organs of state administration necessarily

<sup>110</sup> Bertelmann, K.: "K problematice pojetí orgánu státní a správy," (On the problems of state power and state administration) *Právník* 1960/8, p. 741.

<sup>111</sup> Peška, P.: "Úvahy k perspektivní konstrukci zastupitelských sborů," (Reflections on the developing of representative bodies) *Acta Universitatis Carolinae Iuridica*, Praha No. 4/1966, p. 225.

<sup>112</sup> Zawadzki, S.: "A nemzeti tanácsok és bizottságai az empirikus-jogi vizsgálatok fényében," (The National Councils and their Committees in the light of empirical-legal investigations), *Állam és Igazgatás*, 1968 (XVIII), Vol. 1, p. 22.

strengthens the position of the national councils (cf. Article 51 of the Constitution).

The *theoretical standpoint* became dominant in all European socialist countries, including Hungary, according to which: (a) the regrouping of the jurisdictions of local and regional organs serves the *protection of the citizens' rights* and the *consolidation of legality*; (b) the powers of the local and regional organs must be defined not in general, but separately, on various levels, because the local and regional organs working at different levels can discharge their duties towards society by the solution of different tasks; (c) the most important powers of the *popular-representative bodies* and of the *executing-disposing organs* must be separated from one another as clearly as possible even on the same level since this entails the development of socialist democracy; (d) one of the most important ways of defining the powers of local and regional organs of any level and nature is to lay down *exclusive jurisdictions*. These theoretical standpoints do not contradict the requirement that jurisdictions of *non-guarantee* nature must not be so strict to make it impossible to regroup them in the case of changes. Not all powers, perhaps not even their majority, should be placed in the category of exclusive powers. Legislation must determine with high accuracy the matters requiring decision of the lowest level and also the matters on which a widely democratic decision is the most satisfactory for psychological or other reasons. (In the latter case either the representative organ or some direct democratic institution to be discussed later must be resorted to, or maybe, the combination of these two will be necessary.) I do not doubt, that empirical, sociological or other scientific studies are required for drafting statutes in these questions; I refer here to the research project conducted recently in the Estonian SSR and in Poland.

Recently, legislation in the European socialist countries has made good use of the conclusions of legal doctrine. In most cases the division of the tasks of the local organization on the different levels was carried out, without, however, determining the inner spheres of authority. Two methods of regulation are known which differ from each other also in their effect: *general codification*, on the local and regional organization, i.e. a single law or statute on the council organs; and statutes which effect the regulation by levels, or regulate only certain levels (e.g. communal provision).

Regulation in Bulgaria was introduced in the form of a general act on the people's councils. The act is rather old (it was adopted in 1951), but as a result of three radical amendments—in 1959, 1964, and 1969—we must regard it as an act of entirely new approach. Article 11 of this act states—in a considerably modified form—the powers of the county people's councils as follows: (a) guiding and supervising the activities of

local industrial and communal services; promoting the development of co-operative industries; leading and supervising the management of water supplies, commercial undertakings, branches of these, their subordinate commercial establishments; state control of co-operative farms and artisans' co-operatives; assisting and supervising enterprises of central subordination; (b) drafting the economic plan of the county, approving the economic plans of their subordinate enterprises and establishments; giving expert opinion on the economic plans of other organs; (c) the adoption of the budget, the direction of its implementation; (d) carrying out co-ordinating tasks in the economic field; ensuring that enterprises and farms fulfil their obligations; (e) leading the communal people's councils; (f) the election and recall of judges and assessors of the county courts. According to Article 11, the powers of the communal people's councils are these: (a) drafting the economic plan and the budget, directing their implementation; (b) directing communal activity, services, town-planning, public health, state retail trade; supervising the plans for the circulation of commodities and state purchases, responsibility for the local industries, agriculture, co-operative retail trade, for educational, cultural, health and social activities; (c) to promote the enforcement of the instructions issued by other state organs, by social organizations in the territory of the council; (d) render administrative services to the population. It is evident that the enumeration of tasks is rather skeleton-like; it is not a genuine division; the Act only draws attention to a few important differences in accordance with the two levels of territorial administration.

The Czechoslovak Constitution of 1967 already bears the marks of the demand for defining more detailedly the jurisdiction of the different levels. Accordingly, the National Committee Act of 1967—amended considerably since then—contains clear dividing lines and powers of the levels; also the powers of the plenum of national committees are separated from other powers. Communal jurisdictions is defined by paragraph /2/ of Article 25 as follows: the administration of kindergartens, primary schools, infants' nurseries, children's homes, school canteens, lending libraries and other cultural institutions, local transport and street lighting; providing communal and other services; approval of the location and opening hours of shops and deciding in other questions of supply; state-administrative activity (keeping records and registers of births, marriages and deaths); fire-protection, public construction, housing and allocation of premises, plant-cultivation, animal breeding, the protection of soil and forest reserves. The same Article declares that if other state organs take measures affecting the interests of villages, they are under obligation to obtain the opinion of the communal national committees. In the definition of the powers of the district national committees, it is interesting to note that the typical tasks of state administration enume-

rated in Article 19 of the Act are assigned to this organization; thus, the most important organ of the practical work of administration is the district organization (paragraph /2/ of Article 27). It was the definition of the functions of the regional national committees that was the least concrete.

The act took the greatest step forward by enumerating in 14 items *the rights reserved for the plenary session* of the national committee (i.e. exclusive rights). These are: determining the long-term development plan and medium-term programmes, evaluation of their implementation, adopting the budget, approval of the appropriation accounts, establishment of economic, budgetary and other organizations, their dissolution or merger, the modification of territories; determining the number of national committee deputies, of constituencies, of the boundaries of the latter; the establishment and dissolution of expert committees, special sections, etc.; the election and recall of the functionaries (president, deputy president, secretary, other members of the council, chairmen of the expert committees, their secretaries, members); the election of the functionaries and members of the people's control commission of the national committee and approval of their work-plans; the appointment and recall of the heads of special sections; issuing general ordinances, resolutions on the raising of loans, granting of credits; in the case of district national committees, the election of the president and deputy president of the district court; discussing the report on the activity of the district court and the same rights on the regional level in respect of the regional courts (Article 39, Paragraph /2/). The same Article declares (Paragraph /3/) that the national committee may reserve rights also in other matters. Article 38 of the Act is remarkable in that it grants independent powers to the national committees; in the scope of these they cannot be ordered, they are only subject to laws and other statutes of general validity. The relevant fields are: the environment, the construction of flats, services for the citizens, the development of cultural and social life, physical education, the establishment and direction of economic organizations, the approval of the economic plan and of the budget, the establishment and management of funds. This line of the Czechoslovak legislation provided the possibility of laying down the particular rights of the representative bodies, and especially those of the communal people's representation, more efficiently than in the attempts made so far. Although this trend seems to contradict the constitutional standpoint on the unification and unity of state authority and administration, it is exactly here that progress can be felt.

In the Soviet Union—as was to be expected after the preparation of several years—the first statute aimed at a more thorough definition of jurisdictions was passed regarding the communal level. The characteristic of this legislation is that the rights and obligations, i.e. jurisdictions of the

village and settlement Soviets were laid down in a law decree and that, along with this, the Presidium adopted, and recommended with its resolution a broader model regulation comprising organizational-operative questions to the presidium of the supreme Soviets of the federal republics. (The pertinent acts of the republics were enacted later.)

This list of rights and obligations is highly detailed and long, and contains also detailed administrative issues almost everywhere. It is an important new provision that Article 8 of the said decree granted exclusive rights of decision and resolution to the sessions of the Soviet. A part of these relates to the inner organization and working of the Soviet: the approval of mandates, the acceptance of resignation from mandate, passing resolutions on the basis of interpellation, the election of the executive committee and of standing committees, changing their composition, accounting on the work of these organs, the election of the contravention committee of the executive committee.

It is the other reserved jurisdictions that actually mean the novelty in Soviet legislation. These are: the approval of the economic, social and cultural plans, the operative *plans* (these plans are drafted on the basis of the instructions of the constituents), the approval of the *budget* and the *appropriation accounts*, the *distribution of monetary means* resulting from the extra revenues and expenditure savings, summing up and *distributing monetary means* provided by certain organs, scrutinizing the remarks on the working rules of the agricultural *artiel* (co-operative), the *appointment and discharge of the heads* of institutions and enterprises, the adoption of *motions* which are submitted to the executive committee of the higher Soviet for the formation, merging, dissolution of village and settlement Soviets, for changing their name, for fixing and changing their boundaries. Otherwise the decree states that the legislation of the Federal and Autonomous Republics may also grant other reserved powers to the session of the village and settlement Soviets. (Article 32 of the Act passed by the Supreme Soviet of the Armenian SSR in 1969 enumerates the reserved powers.)

Article 7 of the 1973 GDR Act on Local Popular Representations enumerated their exclusive rights without denoting the jurisdictions of the different levels. Chapters III to V listed at the same time the duties of the various levels without making a distinction between the jurisdictions of given organs.

The Yugoslav law employs a different system for defining the jurisdiction of the representative organs. The federal constitution does not enumerate the powers of the local organs, but the communal ordinances give a highly detailed enumeration for the villages. This enumeration, however, usually makes no distinction between the separate powers of the various organs.

Entirely novel, up-to-date solutions are to be found in the Polish Council Act of 1973, and in the Hungarian Council Act of 1971. The Polish Council Act defines the tasks of the National Councils as follows: they approve of the socio-economic plans for the development of the respective territories; they give their consent to the budget; they co-operate with the enterprises and organizations subordinate to them and taken part in co-ordinating the activity of co-operatives. Furthermore, Articles 16–22 of the Act also define the special tasks of the National Councils of various levels. The Act defines the tasks of the Presidiums of the National Councils only in a general way, and the same applies to local (territorial) organs of state administration. However, Chapter IX of the Act especially emphasizes the rules relating to the National Councils of greater communities, also giving a detailed enumeration of the special rights of provosts in the great communities. Thus, division of labour has become well regulated both horizontally and vertically.

The Hungarian Council Act of 1971—which preceded the constitution amendment of 1972 containing only skeleton provisions on the councils—provides for a highly detailed regrouping of competences. Competences are split up into general ones (valid on all levels), and into particular ones (valid on different levels). In addition to this vertical division, competences are distinguished also horizontally. Accordingly, the following are declared inalienable from the authority of the council (council session), i.e. exclusive: taking a stand in questions of national importance; establishing and directing its own organization; laying down the revenues of the local council, development plans, programmes, the medium-term financial plan and the budget, principal guide-lines of the activity of the local council; the adoption of the general development plan; framing decrees of the council; elections and appointments; election of the people's assessors and of the members of the people's control commissions, the election of the officials of the latter and defining their powers and—in the case of local councils—the powers raise credits, to establish institutions and enterprises, and to change their legal status (Article 20 /1/–/3/). It may delegate its other rights—except those stated to be exclusive in the organizational and operative regulations of the council—to the executive committee. The executive committee similarly has exclusive and transferable powers. The independent directive, supervisory and official powers of the specialized administrative organs are determined by statutes. So it was possible to eliminate the overlapping of jurisdictions for the most part from the Hungarian council system and to ensure the rights of decision of the popular-representative organs of different levels.

Another question comes up in connection with jurisdiction, and conveys at the same time a true picture of the overall situation of the



representative organs within the socialist state organization. It is the problem of legislation by the representative organs. Rules of various names, norms valid for longer periods that are created by the organs of popular representation take place usually at a lower degree in the hierarchy of the sources of law in the socialist countries.

Concerning the question of the norms and directives of local and regional organs, there is a fairly large dissimilarity in both the legislation and scientific views of the European socialist countries. A basic problem is that, on the one hand, it was not regulated in every country, what kinds of by-laws may be issued by the local, viz., the regional organs, or whether they may issue some at all. On the other hand, it is still doubtful whether these norms only serve the implementation of some higher statute or they are issued within an independent sphere of legislation. Both sets of problems actually raise one of the most important questions of both local and regional organs, namely whether they are particular organs of authority, or only a level of *execution*. For if the law- and norm-making rights of local and regional organs result only from express authorization, we must see in them a part of the executive organization, and the most often used definition in the constitutions that they are organs of state authority does not reveal the true picture of them. The problem of the legislative power of local and regional organs is therefore larger than it seems to be at the first glance. So a few solutions are worth studying.

Article 9 of the often-amended Bulgarian act of 1951 on the people's councils states that the people's councils "pass decisions within the scope of their jurisdiction, and issue decrees and orders". But it also contains considerable restraints because provisions must agree not only with the constitution and the laws, but also with the instructions and other acts of the presidium of the National Assembly, with the resolutions of the Council of Ministers, with its orders and decisions, and with the decisions of the superior people's councils. It seems, therefore, that the contents of the resolutions, decrees and orders of local organs, the people's councils are limited not only by legal norms but also by other measures. Yet, at the same time, Article 12 /a/ of the Act grants wide powers to the people's councils for issuing decrees in questions of local importance in a field which "is not regulated by an Act, decrees or other dispositions of the superior organ". Thus, this Act separated two fundamental questions: (a) there exists a field "not regulated" by higher statutes and dispositions in respect of which the people's council may issue norms; (b) such norms cannot be contrary to the statutes and other acts of the higher organs. (The Act declares that the decrees of the people's councils are valid for two years, and their validity may be prolonged for two more years.)

A similar stand was taken in a Polish Act of 1973 on the national councils; it declares in Article 6 that the national councils may issue

compulsory legal norms "within the scope of their rights guaranteed by the law", and thereby denoted a part of their jurisdiction. This was completed by the Act in Paragraph /2/ of the said Article by saying that the people's councils may issue decrees especially for protecting public order and security "in fields not regulated by rules". Thus, also by the latter provision, the regulation of such fields is made possible.

Article 93 of the Rumanian constitution of 1965—which has been amended since then—and Article 43 Paragraph /3/ of the Hungarian Constitution speak only in general terms of the statutes passed by local and regional representative organs and do not mention the possibility of regulating "unregulated" fields, but do not even exclude it.

It is interesting to note that the two latter legal regulations on local and regional organs, the Czechoslovak Act of 1967, and the Soviet model regulation of 1968 do not state and define the nature of the legal norms of local organs. Article 39 /2/ item k. of the Czechoslovak act assigned the passing of "general compulsory decrees of the national committees" to the authority of the plenary sessions of these committees, but did not treat these decrees in detail. Article 6 of the Soviet model regulation only stated that "the resolutions and directives passed within their competence by the village and settlement Soviets of the workers' deputies has to be observed by all kolkhozes, sovkhozes, enterprises, institutions and other organizations in the territory of the Soviets, by all official persons and all citizens." But, by stating this obligation, the regulation speaks not only of the legislative powers of the local Soviets, but of their powers in general, the separation of which would be desirable.

The Hungarian Council Act regulates local and regional legislation more in detail than the constitution. Article 34 /1/ expressly states that the purpose of passing decrees of the councils is the "implementation of laws" or "settling social conditions that require legal regulation". The latter sentence therefore presupposes that the councils pass legal provisions regarding also spheres where they "do not mean the implementation of a provision"; this shows that these powers are not derived but original (a "non-regulated" field).

As we have seen, constitutions and other different level statutes have chosen two ways concerning the "authorization" of local organs for legislation: (a) They either declared that the local organs may, within the scope of their authority, regulate matters *not settled by higher statutes*, or (b) defined the powers of the local organs relating to the given field of regulation *without* indicating whether the conditions in question had been regulated by higher statutes or not. Yet one thing is clear: there is no provision in the constitutions and legislation of the European socialist countries which makes the reservation that local and regional organs may frame statutes only if they have authorization to do so. This principle is

not present even in a milder form namely saying that local and regional organs must deduce their provision from some national statutory provision. Unless we maintain the view that the abstract principles of state-building and legislation are concealed in the constitutions, this principle would render local and regional legislation, altogether meaningless. I, therefore, cannot agree with the centralistic principle that would prohibit local legislation in unregulated fields without special authorization. (This view is represented by Lajos Szamel in the Hungarian, and by Benditer in the Rumanian literature.)<sup>113</sup>

This theory bears great resemblance to the centralizing principle of *ultra vires* in the legal practice of bourgeois states. We have no reason—neither on the basis of theory, nor on that of positive law—for curtailing the democratic rights of the local organs on the basis of the *ultra vires* principle neither in the sphere of legislation, nor in any other respect.

It appears from the general trend that we must determine the sphere of operation of local organs in the socialist countries as follows:

(a) Statutes define the most important rights of local and regional organs as *exclusive powers*.

(b) Local and regional organs themselves have the possibility in less important fields *to take measures if necessary* (or central and higher organs may draw certain matters within their own jurisdiction if it is inevitable); this is so because such matters are not within the exclusive powers of the local and regional organs and the organ entitled to regulate them cannot be determined with full certainty.

(c) *Statutes* may be framed by local and regional organs of popular representation if they have *exclusive competence* to do so, or if they are *authorized* to do so by higher, competent organs in local (regional) matters, or, finally, if local (regional) issues are involved which were *not regulated* by higher organs of legislation; i.e., the given issue is unregulated.

(d) Normative and other acts of local and regional organs *cannot be contrary* to the constitution, to the law or to other provisions of a higher hierarchical level. It is another question whether in the case of a statute passed within the scope of exclusive powers there can exist a higher statute of generally contrary contents, since this is a matter in which only one of the local (regional) organs have authority to decide.

It appears, then, that this trend is at the same time a process of purification in the history of local and regional organs. This does not mean as if the local and regional organization came into contradiction with central state authority. There are neither political, nor other reasons for this. Central, local and regional organs each are alike, i.e. an

<sup>113</sup> Bihari, O.: *Socialist Representative Institutions*, Budapest 1970, pp. 212–214.

organization which expresses the united power of the working classes. Yet the developing, growing powers of the local and regional organs provide the possibility for a novel division of labour. This division of labour emerges from the requirements of socialist democracy. Local economy, communal supply, the local and regional accomplishment of most cultural and social-sanitary tasks increase the possibility to oppose overcentralization, the possibility of rationalization and of control by the people.

The expansion of local and regional powers undoubtedly creates—in certain cases—a counterbalance to central state activities. It is an important basic problem of political science and the building of the state, to determine how far this counterweight is favourable for the development of society, and at what point it begins to act disruptively. It is exactly this proportion we must not regard as being absolutely constant. The proper or harmful character of this proportion is influenced by the changes of economic and political factors. This circumstance must not be neglected in the legal regulation of fields exposed to changes. Where, however, a constant local and regional democratic influence is desirable, we must respond to this with the stability in jurisdiction.

### **3. Structural Questions in the Local and Regional Power Organizations**

It is a remarkable feature of the debates of the 1960s on the socialist state organization that, especially in the first phase, there was more discussion about the necessity of structural changes than about concrete investigations into the definition of jurisdictions. When the laws were eventually passed in the various countries, the structural-organizational problems were pushed into the background, and questions of operation and jurisdiction came to the fore. I might say that, in the beginning, traditional solutions were favoured in structural respects, apart from the essentially different Yugoslav attempt, and from the Rumanian one which was not codified after all. But this cannot be simply ascribed to some kind of conservatism. I rather venture to say that the local and regional organization had been much less subject to reforms—for more than half a century—than the organs of central power. Consequently the “classical” type took shape with fewer complications than in the case of central power. If I say a “classical” type, I do not mean the model of a given constitution. What I should like to express is rather the fact that the division of labour took place on a fairly rational basis within this organizational form, and that here it was really possible to take into account the experience of several centuries on local administration controlled by representative bodies, and on the local and regional organs

of the population with a lesser or greater right of self-government. This explains, among others, why it was possible to transform the older self-governing bodies of the local and regional organs to ensure their "growth into" the socialist council system in some popular-democratic states through increasing democratization, through the abolition of property qualification and of the favouring the greatest tax-payers in voting. Looking back upon the constitution of 1949, in the GDR it was emphasized in the literature on constitutional law that gradual democratization had played an important part in the transformation of the former self-governing bodies into socialist local organs. This democratization can be summarized in the phenomena that local popular representation established permanent and firm relations with all social forces and it enhanced its mass-organization character, etc. during this process.<sup>114</sup>

At the beginnings of the formation of the local organization, we see in the Constitution of 1918 almost the same organizational scheme, or its core at least, as in the majority of present-day constitutional models. Articles 55, 56 and 58 of this established executive organs, executive committees, attached to the representative organs, which were the Soviet congresses and the Soviets of the deputies at that time. These executive committees were elected by the Soviet congresses and by the Soviets from among their members. These committees exercised the supreme state authority in the respective regional units when the Soviet congresses were not in session. The number of the members of these executive committees did not differ considerably from the present norms (maximum membership in the provinces and *oblasts* was 25, in the districts 20, in *raions* 10, in villages 5, in towns 3 to 15, in Petrograd and Moscow 40). In addition to the organs mentioned in the constitution, sections headed by a leading official were working with the executive committees for assisting them in their executive work. This scheme survived later on almost unchanged. I should like to mention that from 1920 on the activity of so-called sections brought an important reform to the administrative apparatus of the Soviets; these organs, assisting and controlling the executive committees, consisted of deputies and other activists, and took over administrative functions in some places. The rights of these sections were reduced later, and they were finally abolished.<sup>115</sup> The stability of the Soviets, the Soviet congresses and executive committees in that period cannot be compared to the organization of our days, due to the frequency of their re-election.

<sup>114</sup> Leichtfuss, H.: "Verfassungsentwicklung und Volkssouveränität. Eine Studie einer bedeutsamen Phase der Verfassungsgeichte der DDR." *Staat und Recht*, XVII (1968), No. 2, p. 197.

<sup>115</sup> Cf. Bihari, O.: *A tanácsok bizottságai* (The Committees of the Councils), Budapest, 1958, pp. 43-45.

Chapter VIII of the Soviet Constitution of 1936 defined the Soviets of the workers' deputies as the local organs of state power (they were elected for a term of two years), while their executive and directive organs were the executive committees (consisting in smaller settlements of a president, a deputy president and a secretary). Chapter VIII of the 1937 Constitution of the RSFSR gave a more detailed description of the organization of the local Soviets, the specialized administrative organs, sections and directorates subordinate to the executive committees.

Article 89 of the 1977 Constitution characterizes the Soviets of people's representatives as bodies of state authority in the various territorial units. Their executive-administrative bodies are the executive committees whose members are elected from among the representatives by the Soviets. The Constitution does not go into further details concerning the organization of the Soviets.

The Bulgarian system of people's councils is—in essence—of a similar structure. Council sessions on the county level must be convened at least every three months, the sessions of other people's councils at least every two months. The standing committees of the Bulgarian people's councils are initiating, *executive* and control organs, and *one third* of their membership consists of *non-council members* elected in addition to the council members. The competence of the standing committees is expanded as compared to the earlier solutions: in certain cases they may pass resolutions relating to enterprises and institutions subordinate to the people's councils, and may issue compulsory *instructions* to the heads of administrative organs, if they find that norms have been violated. The members of the executive committees are elected by the people's councils from among their members. The heads of specialized administrative organs are appointed by the executive committee with subsequent confirmation by the competent people's council. Other employees are appointed by the executive committee, or by a member authorized by it, or by the head of the administrative organ.

The resolution of the Presidium of April 17, 1968, on the model regulation for the village and settlement Soviets of the workers' deputies provided that the village and settlement Soviets be elected for a term of two years as before. The sessions of the Soviets must be convened at least six times a year. (They have a quorum if minimum two-thirds of the deputies are present.) Here too, the executive-directive organ is the executive committee, and it is elected by the Soviet from among the deputies. The standing committees are elected by the Soviet from among its own deputies for the preliminary investigation and preparation of questions coming under its authority, and for co-operating in the enforcement of the resolutions of the executive committee. The model regulation points out as a particular obligation to form a mandates committee, a

planning and budgetary committee, and a committee dealing with socialist legality and with the protection of public order. Other committees, such as temporary ones, may be set up by the Soviet upon its own decision.

Articles 81 and 83 of the GDR Constitution deal, among others, with the organizational problems of local popular representation. The local popular representations are called the organs of state authority in the districts, regions, towns, town districts, villages and associated villages. The *executive-organizing* organ is the council, whose members are deputies "if possible". Persons who are not deputies may also be elected members of committees entrusted with organizational and controlling tasks.

The constitution amendments of recent years, and the legislation in connection with local and regional organs, have brought about the introduction of novel, experimental organizational forms in several countries.

According to Article 86 of the Rumanian Constitution, the people's councils are the local organs of state authority, and are elected for five years. The standing committees are elected from among the deputies; they assist the people's councils in performing their tasks. The administrative organ of general powers of the people's council is the executive committee which is elected by the people's council from among the deputies. The executive committee has specialized administrative organs. Behind this seemingly traditional form, however, substantially different features have developed which came into existence as a result of a new division of labour between party and local (regional) state organs (the chairman of the executive committee being at the same time the first secretary of the party in the county; the situation is similar in the case of the mayors of towns; the separation of specialized administration of the people's councils and the party organizations; co-ordinating economic committees which are attached to county party committees, etc.). All this may have much deeper structural consequences than that which appears from the amendments of the constitution. This model is, at any rate, entirely new, it is an experiment with a form so far unknown in all socialist countries.

The Czechoslovak local organization was reshaped by the Constitution of 1960 and by the National Committee Act of 1967. As I have said earlier, the constitution calls the national committees organs of *state authority and administration* in districts, country districts and villages. Their organs are: the council elected by the national committee from among its members, directing and co-ordinating the work of the other organs and institutions of the committee; the expert committees—initiating, controlling and executive organs in given branches—elected from among the members of the national committee and from among other citizens. (Thus the constitution does not speak of organs of specialized

administration, it only emphasizes the executive activity of the export committees.)

The National Committee Act seemingly did not modify the general scheme of the organization. But, at a closer look we see differences already between the definitions of tasks given by the statutory and the constitutional model. Paragraph /1/ of Article 1 of the Act mentions the national committees in the same way as the constitution. It calls them organs of state power and administration; but it is the whole national committee organization that is meant by this expression in the Act. The most important organizational form of the national committees is their plenary session which assembles for ordinary session in districts and country districts at least four times annually, and in towns and villages at least six times. In this case the definition of the council utterly differs from that of the constitution, because—using the established definition of the executive committees—it calls it the executive organ of the national committee with general powers (the number of membership ranges from 5 to 20). The members are deputies (Articles 46 to 49). The Act declares that the expert committees are first of all initiating and controlling bodies; they exercise supervision over the organs subordinate to the national committees, but may not interfere with operative direction of these. According to the Act, the scope of their executive activity is restricted to cases entrusted to them by the plenary sessions. The municipal model ordinance points out that the work of the expert committees must be ever more strongly based on principles. In towns and villages where no special sections are set up, their tasks are attended to by the expert committee. The president and the majority of the members of the expert committee are deputies, other members are persons recommended by social organizations. The Act has built up the network of the commissions of people's control in the district and regional national committees. The president is the representative of the national committee, the members are deputies or other citizens. The sections are specialized (branch) or functional organs of administration in regions, districts, towns and villages. The sections are organs of the council, their work is directed by a head of section.

Thus the organization established on the basis of the said Czechoslovak Act came closer to the traditional socialist local organization. We must take into account that the communal and municipal ordinances (cf. Article 25 /4/ and Article 26 /5/ of the Act) may colour this organization in certain questions, although the National Assembly resolution of December 1, 1967, on the model ordinance of municipal national committees defines this in a fairly detailed manner.

The most dissimilar model—as we have said—is the Yugoslav *skupština* system. The views held about the communities—the villages—affects from the beginning the questions of organization. The federal constitution



of 1974 tells us very little about this; it mentions the delegates to the communal assembly (Article 116), and regulates the system of representative bodies in detail (Articles 132 to 152). The organizational contacts between the organizations of associated work and communal representation are dealt with in the communal ordinances but I must mention the institution of rotation which permits only one re-election of the same person for one and the same specified function (this has been hitherto unknown in the organization of other socialist countries).

The most important organ of central position in the communities is the communal *skupshtina*, the body of representatives. It is usually made up of *several chambers*; e.g. the communal assembly at Osiek has three councils, i.e. the council of associated work, the local council, and the socio-political council. The other organs of the *skupshtina* are determined by the ordinances.

The *chairman* attends to the organization of the work of the *skupshtina*, to the calling of the sessions, the implementation of resolutions, co-ordination, supervision, etc. *Committees* are formed for initiating decisions, for studying questions coming within the competence of the *skupshtina*. The administrative organs prepare and enforce statutes and measures of the *skupshtina* organs, manage administrative-technical matters. Within their competence they act independently. Their work is directed by the heads of administrative agencies; the work of all administrative agencies is co-ordinated by the secretary of the communal *skupshtina*.

The Yugoslav model differs from the local organizational structure of the other socialist countries in the following: (a) *in the electoral system*, i.e. in that the representative system of indirect voting laid down in the constitution essentially brings into existence the organizations of associated work; (b) as a consequence it is a *multicameral* organ of popular representation; (c) *no administrative organ of general powers* exists in this local organization; (d) the assemblies of popular representation are *separated* rather rigidly from the administrative agencies performing technical-administrative functions. It also appears from this organizational scheme that a tripartite division has taken shape: the representative organ, the executive organs formed (partly) of the members of the latter, and the technical-administrative, viz. special-administrative organization.

In the course of recent legislation, it was the Polish amendment and the Hungarian Council Act that departed from the former model to a certain extent.

The amendment of the Polish Council Act attempted to introduce more efficient forms on every level. The national *council* is defined as the organ of state authority and the basic organ of social self-administration. The councils have a *presidium* as well as standing and provisional *committees*. The executive directive organ of state administration and of

the council is the voivode, the town or the village magistrate; he directs the public administration of the given territory. As is seen, the Polish solution has replaced the former collective organ by an individual institution in the field of general administration. In other regional units, the presidium of the council (i.e. its administrative organ of general powers) is elected not only from among council members, but also from among other persons.

The Hungarian Council Act has re-defined the various organizational forms. It states in general that the councils and their organs are "organs of popular representation, self-government and administration". *Councils* operate in villages, towns, towns of county status (five large towns), in the districts of the capital (local councils elected by the constituents directly), in the capital and in the 19 counties; to the latter two, the local councils delegate their own members to about 75–80 per cent, and other citizens to about 20–25 per cent (indirect election). The *executive committees* are elected by the councils of the pertinent level from their own members; the essence of their function is general administration as before. The *chairman of the council* is simultaneously the head of both the council and the executive committee. The *secretary* of the executive committee is a person appointed for an indefinite term (he is member of the executive committee, but not necessarily member of the council). He is the guardian of the legality of council work, and directs the specialized administrative organs in villages. The *specialized administrative organization* of villages is homogeneous, i.e. not divided into sections; in other councils, it is usually divided into sections of the branch system. The organs of specialized administration have independent directive, supervisory and public authority powers; they are subordinated only to their executive committee (there is no "dual" subordination). The specialized administrative organs and offices of country districts and town districts are the regional organs of the executive committees of the council of counties and towns of county status (no councils and executive committees operate on that level). The council committees are, in their majority, initiating, advisory, preparatory, supervisory and co-ordinating organs.

What conclusions can be drawn from the organizations we have investigated, from the changes of the last decade, and from the trends in general? In spite of the fact that the debates were going on mainly about organizational modifications in almost all the socialist countries, no decisive changes have taken place in this respect, moreover, it seems as if there were a retreat from earlier attempts. (These, first of all, aimed at changing over to self-government; there was an attempt for example, to establish greater decisive powers for the standing committees—the expert committees—to assign a role to the representative organs in the concrete course of state administration, and so on, which would have entailed a

considerable change in the organizational scheme.) The most important change took place *in the definition of jurisdiction*. The former general statement that "all local issues come under the jurisdiction of the council" was replaced by an accurate definition of jurisdictions which amounts to a specified right and to the exclusion of other organs from the respective state activity at the same time. This definition of jurisdiction points unmistakably in one direction: from the central organs towards the local ones, mainly *to village organs*, and from the specialized administrative organs towards the elected representative organs. This is beyond doubt a dual trend: it is decentralization and democratization. The standpoint that checks and balances should be provided in local and regional organs to oppose overcentralization can be recognized in recent legislation. This is the case also with the desire to subject state activities, including local and regional operations, to comprehensive control and to ensure thereby a clear legitimation of the working of local organs.

Practically all organizational questions lead to problems of jurisdiction. The question of what type of organization we wish to create must be decided with regard to the tasks we wish to accomplish through them. The triad developed here (representative organ—its collective administrative organ or organs—its specialized administrative organization) is no doubt a well-proved model of the socialist local organization because it facilitates the development of the true primacy of the representative organ, and the proper supervision of administration.

The substantial difference between the two types of electoral system results from the unicameral and multicameral organism. It must be considered whether it is necessary to give a more emphatic expression to the special interests of the working strata in the local and regional organization. Yet there are several possibilities of solution to this. I am sure that this question must be answered mainly on the basis of political considerations, and that it is easier to carry out organizational changes on the basis of these considerations.

## THE DIRECT DEMOCRATIC FORMS

## 1. Socialism and the Direct Exercise of Power

We have studied many details of the socialist state-organization in the preceding chapters. We have found that, as a rule, at the end of our train of thoughts we discover a special way of exercising the people's power, i.e. the exercise of sovereignty in the *representative way*. The various methods of a sometimes purer, simpler, sometimes more complex system of representative democracy come into prominence in socialist parliamentarism; i.e. they are dominant in the principle of primacy for the supreme organs of state power and representation, in the powers of the collective presidential organ, in the customary forms of government in the socialist state; the almost traditional form of the local and regional organization can also be traced back here, whether it is a unicameral system created by universal suffrage, or a multicameral one. The fact that one of the methods of power concentration is the election (appointment) of the organ at the top of the organ-types of various functions points back to the representative organs as the basis. The delegation of powers originates in every case from the supreme representative organ which frames the constitution, gives expression to the rights resulting from sovereignty, and possesses virtually unlimited powers. This omnipotence of representation was not only recognized by practically every socialist constitution (except the Yugoslav and the Cuban), but was strongly emphasized as well since the Soviet Constitution of 1936 was enacted. Article 31 of the Federal Constitution of 1936 took the often-quoted stand that all-union rights (Article 14) are exercised by the Supreme Soviet of the Soviet Union, except those for which the Constitution (i.e. the fundamental law originating from the same organ) appoints other organs. The Hungarian Constitution formulates still more explicitly: "Parliament exercises all rights deriving from the sovereignty of the people . . ." (Article 19 /2/), and "The working people of towns and villages exercises power through their elected delegates who are responsible to the people" (Article 2 /4/). One of the recent constitutions, the Mongolian one of 1960, states the following: "The working people shall exercise state power through the

representative organs of the state, the people's hurals" (Article 3). Article 2 of the Czechoslovak Constitution of 1968 indicates the same principle: "The working people shall exercise state power through the following representative organs: the Federal Assembly, the Czech National Council, the Slovak National Council, and the national committees." According to Article 4 of the Rumanian Constitution of 1965, "the people, the sovereign holder of power, exercise it through the Grand National Assembly and the People's Councils . . . The Grand National Assembly is the supreme body of state power under whose conduct and control all the other state bodies carry on their activities." According to the 1968 Constitution of the GDR, "citizens of the GDR exercise their political power through democratically elected popular representative bodies. . . The popular representative bodies are the foundation for the system of organs of the state". [Article 5 /1-2/] <sup>116</sup>

All this seems to prove that only one form of realizing the people's sovereignty took root in the socialist constitutions, namely representative democracy. These constitutions not only ensure the organs of representation a favourable position, but quasi exclude any other ways for the realization of people's sovereignty. This constitutional practice is somewhat one-sided, since—knowing the constitutions of the bourgeois states and of the developing countries—we may say with good reason that no

<sup>116</sup>This basic organizational principle is characteristic not only of the European socialist countries. This is a constitutional principle also in the Chinese Constitution of 1978 (Article 3): "In the Chinese People's Republic, all power is in the hands of the working people. The people exercises state authority through the National People's Assembly and through the local people's meetings of various levels"; as well as in the Vietnamese constitution (Article 4): "In the Democratic Republic of Vietnam, all power is in the hands of the people which exercises it through the national assembly elected by it and responsible to it, and through people's councils of various levels." — The Cuban constitution declares that the National Assembly of People's Power, the supreme organ of state power, expresses and represents the sovereign will of the whole of the working people. Compared with the former constitution, this basic law strongly emphasizes the hierarchical relationships between the supreme organ of state power and the Council of State (Article 72), the Council of Ministers (Article 197) the courts (Article 122) and the chief prosecutor (Article 132). Article 101 of the Constitution speaks of the territorial and local assemblies of the representatives of people's power as the local supreme organs of state power, to which not only the executive committee and the organs of branch administration, but also the corresponding local organ of the prosecution is subordinate. — The Yugoslav Constitution chose an altogether different solution: "Authority over and management of social affairs shall be vested in the working class and all working people. The working class and all working people shall exercise authority over and management of social affairs organized in organizations of associated labor, other self-managing organizations and communities, and in class and other socio-political and social organizations." (Article 88). Then: "Working people shall exercise authority over and management of social affairs through decision-making at assemblies; through referenda and other forms of personal expression of views in basic organizations of associated labor and local communities, self-managing communities of interest, and other self-managing organizations and communities; through delegates in managing bodies of these organizations and communities; through self-management agreements and social compacts; through delegations and delegates to the assemblies of the socio-political communities; and by guiding and supervising the work of bodies responsible to the assemblies." (Article 89).

such uniform stand was taken in them for the representative system. The only conclusion to be drawn from this almost identical constitutional practice is the extraordinary influence of the Soviet Constitution of 1936, and the fact that, as a result, all other experimental forms of building a state were taken off the agenda.

This one-sidedness is all the more striking since if we look back upon the earlier stages of the history of socialist ideology, or upon the notions about the state held by Marxism at the end of the last century, we obtain an altogether different picture. One of the fundamental problems of Marxism was to make a "constitution" whose organizational model "would have restored to the social body all the forces hitherto absorbed by the state parasite feeding upon, and clogging the free movement of society."<sup>117</sup>

Actually, Marx and Engels wanted to set all forms of a non-alienated social organization against all forms of alienation. And though Engels was far from being enthusiastic about the "legislation by the people" which exists in Switzerland "and . . . does more harm than good when it does anything at all",<sup>118</sup> in his critique of the Erfurt draft programme he did not reject direct democratic institutions as a whole but he demanded their exact definition: "The right of the people to propose and reject *what?* All laws or the decisions of the people's representatives—this should be added."<sup>119</sup>

In the first period of the emergence of the Soviets, Lenin raised the possibilities of non-representative or direct influencing in the new "power" even more sharply. He writes about the Soviets of 1905–1907: "It was an authority open to all, it carried out all its functions before the eyes of the masses, was accessible to the masses, sprang directly from the masses, and was a direct and immediate instrument of the popular masses, of their will."<sup>120</sup> Later, in March 1917, in his third letter (*Letters from Afar. On the Proletarian Militia*), he said that when the old state machinery is crushed the people "... must substitute a new one for it, *merging* the police force, the army and the bureaucracy *with the entire armed people*", and that the Soviet organization must be created "... for all the trades and strata of the proletarian and semi-proletarian population without exception".<sup>121</sup> And as the possibility of building a socialist state was drawing nearer, and the experience of the Soviets of the period of dual power was piling up, Lenin stressed the importance or possibilities of

<sup>117</sup> Marx, K.—Engels, F.: *The Civil War in France, Selected Works in Three Volumes*, Vol. 2, Moscow, 1969, p. 222.

<sup>118</sup> Marx, K.—Engels, F.: *Selected Works in Three Volumes*, Vol. 3, Moscow, 1970, p. 34.

<sup>119</sup> Marx, K.—Engels, F.: *Selected Works in Three Volumes*, Vol. 3, Moscow, 1970, p. 437.

<sup>120</sup> Lenin, V. I.: *Collected Works*, Vol. 10, Moscow, 1965, p. 245.

<sup>121</sup> Lenin, V. I.: *Collected Works*, Vol. 23, Moscow, 1974, pp. 324–325.

a direct, "primitive" democracy: "... the transition from capitalism to socialism is *impossible* without a certain 'reversion' to 'primitive' democracy (for how else can the majority and then the whole population without exception, proceed to discharge state functions?) ... 'primitive democracy' ... is not the same as primitive democracy in prehistoric or pre-capitalist times".<sup>122</sup> Furthermore: "Under socialism much of 'primitive' democracy will inevitably be revived, since, for the first time in the history of civilised society, the *mass* of the population will rise to taking an *independent* part, not only in voting and elections, *but also in the everyday administration of the state*. Under socialism, *all* will govern in turn and will soon become accustomed to no one governing."<sup>123</sup>

One particular form of building a state, the development of the institutions of a direct, "primitive" democracy, was therefore not alien to Marxism-Leninism in the period preceding the socialist revolution. It appears from their works anyway that Lenin showed greater interest in them than Marx and Engels. The probable reason for this is that the field of investigation of Marx's and Engels' was mainly Western Europe in respect of the state of the future where—as Engels indicated—they found petrified, medieval-like forms of direct democracy not at all attractive for the proletariat. Engels, in his critique of the Erfurt draft programme, wrote that "... our Party and the working class can only come to power under the form of a democratic republic. This is the specific form for the dictatorship of the proletariat ...".<sup>124</sup> When seven years earlier he had explained in his letter written to Bernstein that the proletariat, too, needs democratic *forms* for the seizure of political power, Engels thought of the representative forms used by the organized movement of the working class in the West which were much more "modern" than the Swiss forms of a "peasant democracy". On the other hand, Lenin's interest in, and stand for, a "primitive" democracy came in the limelight at the time when the movement of the Soviets assumed national dimensions in Russia for the first time. The "irregularity" of the Soviets' emergence, their "non-parliamentary" development, fascinated everybody, even many political opponents of the Bolsheviks. A model emerged in that country, far away from West European parliamentary traditions, which set an example of a novel representative system and the possibilities of direct democracy alike. Lenin's enthusiasm for the new form "found at last", showing even through his objectivism, is not surprising, for it was without any political recipe that, in the ranks of the working class, a revolutionary organization unfolded in which the constantly changing Soviet representation promoted rather than hindered the assertion of the masses' will as a result of

<sup>122</sup> Lenin, V. I.: *Collected Works*, Vol. 25, Moscow, 1974, p. 420.

<sup>123</sup> Ibid. pp. 487–488.

<sup>124</sup> Marx, K.—Engels, F.: *Selected Works in Three Volumes*, Vol. 3, Moscow, 1970, p. 435.

the many organizational guarantees. And once it appeared that it is not the West to take the first step on the road to the socialist revolution, it was clear to Lenin that, following the example of the Russian revolution, such forms must be set into operation that are not "parliamentary", in which the democratism of the direct exercise of power must also play a role.

Lenin's idea of direct democracy can therefore hardly be isolated from a given phase of the shaping of the Soviet system, and from Russia in this form. The almost complete lack of the parliamentary idea entailed even in the most progressive workers' strata standpoints and an ideology related to building the state that differed from those in the West. This consideration was supported by the fact that, after the October Revolution, the only possibility of a new organization seemed to be the creation of the workers' productive and other organizations at national conferences. This was due to the fact that the old state and social organization had completely disintegrated, or had been crushed by the revolution for the most part. Therefore the democracy of 'meetings' was held in high esteem as a form of direct democratic action, and was, so to say, incorporated in the state and social organization. The data which Kotok presents on the conferences and congresses held with the participation of various strata of workers and other employees between 1918 and 1922 are highly characteristic. He enumerates twenty-five of the most important conferences and congresses, such as the conference of non-party workers and red soldiers in August 1919, the 1st extraordinary congress of the miners and the 3rd all-Russian congress of textile workers in April 1920; the 1st all-Russian congress of the working cossacks in March 1920; the 1st all-Russian congress of agricultural sections, poor-peasant committees and communes in December 1918; the 1st all-Russian congress of working women in November 1918; the 1st congress of the workers of adult education and socialist culture in July 1919; and the all-Russian congress of internationalist teachers in June 1918.<sup>125</sup>

All this shows that the organizational form of a direct democracy "of meetings" was held in the young Soviet state a most practicable form for the "dialogue" with the masses, and a method for organizing the masses which created the organizations of the proletarians and other working strata—these important and indispensable links of Soviet power—to replace the crushed bourgeois organism. This was a historic situation in which the young Soviet organization was fighting against the isolation of the new state organization from the masses, in the course of assuming stability. Let me quote here, only by way of characterization, a short

<sup>125</sup> (Kotok, V. F.) Коток, В. Ф.: *Съезды и совещания трудящихся — форма непосредственной демократии* (The meetings and consultations of the working people — a form of direct democracy), Moscow, 1964, pp. 19–20.



passage from a very clear-cut resolution passed in March 1919 by the 8th congress of the All-Russian Communist Party (of Bolsheviks): "... Soviet power provides for the working masses incomparably greater opportunities, than did bourgeois democracy and *parliamentarism*, to elect and recall their deputies in the easiest and most accessible ways, and at the same time eliminate the *disadvantageous sides of parliamentarism*, especially the separation of legislative and executive powers, the *isolation of the representative institutions from the masses*, etc." In the same resolution we then find the famous "itinerary" on the development of the socialist state, and also the reasons given for this conception: "1. All members of the Soviet are bound to be drawn into performing certain specified work of state administration. 2. These duties must be kept consistently alternating so that they gradually embrace all the branches of administration. 3. The entire working population must gradually be drawn, into the work of state administration. All these measures—which are another step ahead on the path started by the Paris Commune—find their full implementation in all directions, and the simplification of administrative functions coupled with the simultaneous raising of the workers' cultural standards, will lead to the cessation of state power."<sup>126</sup>

The train of thoughts is clear: all forms that can be created *in the presence of the Soviet power organization* must be exploited for improving the political consciousness and knowledge of the masses, i.e. for their cultural advance in the broad sense of the term. All organization, all political development work must be shaped around the Soviet organization to the ultimate point where the state as such ceases to exist. In 1919 the long period of transition was not yet reckoned with in the communist movement; what they envisaged in the building of a state was a rapid amassing, rapid "laicization". But in this "itinerary" we find a minimal programme concealed. This is the breaking up of the "isolation of representative institutions", i.e. the prevention of the new state organization based on the masses from being defenceless against alienation.

One has to emphasize the correlation of political ideas with direct democratic institutions in the study of history of the latter. The resolution of the 8th congress must be divided into two parts in this respect: lasting conclusions, and conclusions that seem premature today. One of the fundamental theses at that time, the notion of an early withering away of the state was utopian (because of the various prospects of the revolutionary movement), and so was, as a consequence, the programme of an abrupt laicization of the state organization. It has become clear by now that the institutions of a primitive democracy could not be built lastingly on these bases at that time. It soon became evident

<sup>126</sup> Resolutions of the Congresses, Conferences and Central Committee Plenums of the CPSU, Part I, Budapest, 1954, pp. 483–485. (italics are mine, O. B.).

that the *official* parts of the state apparatus had to be strengthened because of the civil war and the intervention, and later because of the accelerated pace of industrialization, and that it was not possible to replace this organization by any form of a direct democracy. This is the reason why in the Soviet organization emphasis was inevitably shifted towards the operative apparatus in various periods. (By this reason I mean the critical period of defence.) The question of developing the technical apparatus willy-nilly clashed within the model with that of the representative organs, and there was an almost similar clash between the powers and duties of representation and direct institutions.

Yet this study would be one-sided if we only pointed out the utopian features. It was one of the facets of permanent value of the theoretical standpoint of 1918–1919 that through direct democratic institutions it created a defensive line against isolation and alienation menacing the state organs, including the representative ones. No utopian idea whatsoever is involved here, it is rather a very well-considered, we may even say, sociologically justified standpoint which must always be taken into account in the socialist way of building a state. It must be regarded fully justified that at the time of war communism, intervention, and the endangerment of the Soviet state the specialized apparatus, built up only a few months or years ago, was not rapidly loosened with lay elements, but it was certainly not justified to inflate the bureaucratic machinery in the subsequent years. The proper line of the other half of this train of thoughts, i.e. the fight against alienation, ought to have been taken into account just as much as the utopian, unrealistic elements ought to have been disregarded in the standpoints of 1918–1919. One-sidedness was manifest here, just as in the building of the state in the 1930's, in that the democratic, mass features were eliminated without discrimination, and the organization was built up rather mechanically taking into consideration only the requirements of the apparatus.

As I shall point out in more detail later, it is not possible and even not necessary to give preference to direct democratic institutions over the democracy of the socialist representative institutions. Through adequate modernization, through increasing socialist democratism, the latter seem to be more suitable for solving the public tasks of our days than the rather undeveloped direct democratic institutions. These latter are, on the other hand, fit for complementary activities in order to decrease the inflexibility or too etatistic traits of other parts of the state apparatus, to render the activity of the entire state organization more easily accessible to the masses.

Today, after so many experiments in building the state, we must at any rate draw the conclusion that any overdimensioning of the apparatus, the absolutization of its "consolidation", entails the wearing away of the

representative institutions, and that the reference to the "primitiveness" of the direct democratic institutions directs the predominance of power towards the official apparatus and not towards the representative organs. The consequence was the growth of bureaucratism, not the intensification of the relations between the state and the masses.

In my opinion, there is no optimum of the institutions of direct democracy valid for all socialist countries. I tried to explain before why direct democracy was so prominent in Lenin's ideas, in the Bolshevik Party's resolutions of 1905–1907, then of 1917, contrary in a certain sense to Marx who criticized the Gotha programme, and to Engels critical of the Erfurt draft programme. Let me point out another example. A remark of Article 57 of the Soviet Russian Constitution of 1918 was cited fairly often: it replaced certain village Soviets by a direct democratic institution, the general meeting of voters, the so-called *obshcheie sobranie*. ("In villages where this seems feasible, decisions in administrative questions shall be made directly by the general meeting of the electorate of the given locality.") Article 60 recognized the general meeting of the electorate as the supreme organ of authority in these localities within the boundaries of the given area. It is a well-known fact that this constitution had a great influence on the constitution-markers of the Hungarian Republic of Councils. But, despite this fact, no similar institution was included either in the provisory (so-called minor constitution which was issued as decree no. 26 of the Revolutionary Governing Council), or in the final Constitution (the Constitution of June 23, 1919, of the Hungarian Socialist Federal Republic of Councils). According to Article 40 of the Constitution a council—consisting of 3 members as a minimum—shall hold a regular session at least once a month (Article 60). The two solutions lie fairly wide apart indeed.

## **2. The Present Role and Forms of Direct Democracy in the Socialist Countries**

As we see, the "affection" for the institutions of direct democracy is historically and socially determined. The political experience of the working class of a given country decides how great an interest the working class takes in direct democracy. Although the proportions are different, this does not justify the conclusion that this form of contact between state and masses should be given up. The Soviet Constitution of 1936 provided a surprising solution in this respect because—as we have seen—the various institutions of direct democracy had deep roots in the Soviet Union. Nevertheless the institution of referendum was the only direct democratic form mentioned in the constitution of 1936. Even this figured

only among the rights of the Presidium of the Supreme Soviet of the Soviet Union: "... it orders holding a referendum upon its own initiative, or on the request of a Union Republic" (Article 49 /e/).

Similar solutions were included in other socialist constitutions. According to item /d/ Paragraph /1/ of Article 20 of the Hungarian Constitution of 1949 the Presidential Council of the People's Republic has the right "to order holding a plebiscite on matters of national importance". (The interpretation and appraisal of the referendum is not uniform in Hungarian political literature. According to János Beér, the Presidential Council orders a referendum either upon its own resolution, or by instruction from the parliament. The subject of referendum may be a case which requires the universal standpoint of the working population, such as a question of international policy. The Presidential Council may put any matter to referendum except a bill. Since an act may be framed only by the parliament, a referendum over a bill may be held, if at all, only on the basis of parliamentary decision to that effect. According to Beér, there exists no constitutional obstacle to holding a referendum on the timeliness of the statutory regulation of a given question. In his view, the result of a referendum is binding on the supreme organs of state authority, i.e. the parliament and the Presidential Council of the People's Republic. They are not supposed to take any action opposing the people's standpoint unless and until there is a decision to the contrary by a further referendum, and are under obligation to take action in accordance with the result of the referendum.<sup>127</sup> As for me, I did not agree with this view because the Constitution declares—on various occasions—the exclusiveness of the representative organs, of parliament first of all, in the primary exercise of rights arising from the people's sovereignty. Thus the afore-cited constitutional popular-representative exclusiveness (in Article 2) excluded any direct exercise of authority. In my opinion, the lack of interest in the institutions of direct democracy was so widespread at the time when the Hungarian Constitution was born that these institutions were included in Constitution only as a routine so to say, on the pattern of the similar provisions of the 1936 Constitution, without considering the consequences. So I regard this institution only as a consultative plebiscite whose possible result only supplies the legislator with information on public opinion, but by no means binds him legally.<sup>128</sup> The Presidential Council never ordered a referendum in almost two decades, and this is not the result of the legal uncertainty of this institution.

<sup>127</sup> Beér J.—Kovács, I.—Szamel, L.: op. cit. pp. 304–305.

<sup>128</sup> Bihari, O.: *Államjog* (Public law), Budapest, 1964, p. 89.

The above-described tendency was broken by the resolutions of the 20th congress of the CPSU and, following this, by the emphasis laid on the problems of self-government. We cannot say that the recognition of the important role of direct democracy in the modern socialist state organization was formulated automatically on the constitutional level. Changes did not cause such reaction everywhere even in countries where new constitutions had been framed earlier. In Mongolia, for example, the institution of referendum was included in item /f/ of Article 34 of the Constitution of 1960 only as a right of the Presidium of the Great People's Hural in respect of ordering it. Debates that have taken place in socialist countries are at the same time reflected in an ultra-radical provision. The last Article (94) mentions the gradual withering away of certain functions of the state, and, along with this, the annulment of the provisions relating to them. The Rumanian Constitution of 1965 deals with the direct democratic institutions even less than the earlier traditional constitutional provisions. In Article 27 it only declares that "the social mass organizations ensure the wide participation of masses in the political, economic, social and cultural life of the Socialist Republic of Rumania, and in the exercise of *social control* which is the expression of the democratism of the socialist order of society" (italics are mine, O.B.).

Other constitutions and laws made much greater steps ahead in the field of developing direct democracy in recent years. It is almost generally characteristic that they bear the marks of experimentation. There is a considerable difference of opinion about the spheres in which direct democratic institutions should be established. That is to say, whether they should be introduced on the all-state level, or in the lowest territorial units, first of all, in the villages. A look at the proportions of contemporary legal regulation shows that the direct democratic institutions took root in villages and towns for the most part, or at least, that the varied forms are characteristic of these territorial units. In the Soviet Union, one of the countries where this question was regulated at all, this took place on the village level by a resolution of the Presidium. (The operations of general village meetings were regulated in the Uzbek Soviet Socialist Republic by a resolution of the Uzbek Presidium in 1961.) In Bulgaria, this institution was introduced expressly on the village level by an Act on the people's councils amended in 1964, although Paragraph /2/ of Article 2 of the Constitution of 1971 declared that the realization of the people's power takes place through elected representative organs and also directly. (Paragraph /2/ of Article 93 enumerated the referendum, and Paragraph /5/ the ordering of a popular discussion among the rights of the Council of State.) It appears from the constitutions that, if only because of their origin the communal forms are more vigorous and varied than the others even today.

A review of the various forms, proves the fact that *legally irrelevant actions* are often more useful with their less defined forms than those defined from all aspects and therefore exposed to the dangers of bureaucracy. Let us take as example the parallelism between plebiscite and the popular discussion on legislation. The long-established polling system of the plebiscite is inflexible in that the voter has, in most cases, hardly any other possibility than to choose one of two standpoints in connection with a given problem (to vote yes or no). The two kinds of the popular discussion, the so-called general popular discussion and the discussion by a social layer permit the raising of several alternatives and submitting them to the legislators for deliberation. The so-called layer discussion usually mobilizes the social strata having the greatest interest in the regulation and being the most familiar with the social conditions in question. This has the advantage, among others, that the positive votes of unconcerned social strata (large groups for the most part) are eliminated and the opinion of those really interested in various questions of detail of the prospective legislation is asked for. Such discussions were frequently held in Hungary in recent years. Discussions were going on in practically all major urban centres of the country on the drafts of the Criminal Code, the Civil Code with the participation of jurists; on the reform of the economic system with the participation of economists and with the co-operation of persons in the control of production (the latter debate gradually developed into a debate embracing the whole population).

The general public debates have also their *raison d'être* if the field to be regulated affects large masses of people. It is only natural that, say, a constitution draft such as that of the GDR in 1968, or the Bulgarian one of 1971 were put to general popular discussion. (That this debate was concluded by a plebiscite is another question; it was the general popular discussion that contributed to the perfection of the Constitution, the plebiscite was only a general act of the people's consent.)

The general use of popular discussions is proved by an instructive summary of Kotok<sup>129</sup> in which he enumerates the all-popular discussions on federal legislation and other important questions, and the layer debates held between 1956 and 1960. The most important discussions numbered 12 in four years. These were the following: state pensions draft, theses on the management of industry and construction industry, theses on the development of kolkhozes and the re-organization of agricultural machine stations, the draft principles of criminal procedure, the draft programme for developing the relations between school and life, the bill on the foundations of labour law, the draft on increasing the role of the society in the observance of Soviet legality and the rules of socialist

<sup>129</sup> (Kotok, V. F.) Коток, В. Ф.: *Референдум в системе социалистической демократии* (Referendum in the system of socialist democracy), Moscow, 1964, pp. 144–145.

co-existence; the draft model statutes for social tribunals, draft on the committees of minors, the draft on the foundations of the Civil Code, the bill on civil procedure draft. Eight of these discussions were not conducted on the all-popular level because, owing to their nature, they did not go beyond the sphere of experts and other interested persons. But the debates on state pensions, industrial administration, kolkhoz development and school problems were really all-popular, with the participation of millions. About two months were available for the first debate, one month and a half for the second, one for the third, and one for the fourth. In cases where the layer discussions of experts raised complex questions, available time was sometimes considerably longer. For example, the principles of the Criminal Code and criminal procedure were debated for five months, that of the draft model statutes for social tribunals more than one year, the principles of the Civil Code and civil procedure for about 17 months.

Thus the role of the informal direct democratic elements must not be underestimated, since in the past years they really became a suitable means for drawing the population into legislation. As I have said, such debates are better concentrated on the merits of the case than the rigid "yes" or "no" of plebiscites. Naturally—as was proved in the case of the constitutions of the GDR and Bulgaria—a plebiscite may be combined with such informal debate, and this combines the advantages of both institutions. This must be pointed out because the informal legally irrelevant public actions have a serious drawback: if the stands taken here collide with the special interests of the official apparatus drafting a bill, these stands are likely to get lost. If, however, some manifestation of will results from a referendum or from other legally relevant direct democratic action, this may not be set aside by the official apparatus, not even by the representative legislator himself—without an overt violation of legality. But this system of guarantees is missing from the established institution of all-popular and layer discussions which otherwise have a favourable effect as to their contents. In the lack of guarantees, possible abuses on the part of the apparatus, saying that the stands taken are binding on it "only in their rational interpretation", would deprive the direct democratic institutions of a very vital element of the socialist state, of the legitimation by the people. If certain social strata or persons feel that their views—majority or minority ones—are rather regularly (or irregularly, but several times) disregarded by the state organs, this might give rise to distrust. On the other hand, it is very difficult to evaluate—in the case of informal, i.e. legally irrelevant discussions—whether some dissenting motion expresses the will of broader layers, or is of individual nature. This may cause worries at both sides from the political-psychological point of view: the proposer might entertain the illusion in connection with a given question

that it can be realized only because his standpoint is correct in itself, moreover, he might feel that the realization of his proposal is imperative. Yet it may happen at the same time that the trend in the motion as a whole does not permit the adoption of the partial proposal. As concerns the other side, the apparatus—ignorant of the quantitative side of a qualitative proposal—may tend to regard it as a mere individual standpoint. All in all, the absence of guarantees and measurability is the weakest point of this form of popular discussions, and therefore the framers of constitution in socialist countries must consider to work out some complex method standing between the measurable, guaranteed plebiscite and the popular discussions of wider extent. (I classify as a problem of guarantees the fact that at present—in the socialist countries—the minimum number of the matters is not laid down for which popular discussions must, or can, be organized; moreover, it is not regulated which organs are entitled, or obliged to organize and order such discussions. This deficiency has the consequence that the holding of popular discussions occasionally becomes “political fashion” while they are completely ignored at other times irrespective of what important tasks central or local legislation is concerned with.)

Taking all this into account, the *direct democratic institutions relevant from the point of view of constitutional law* are highly important for the constitutional model of state organization, and must by no means be pushed into the background as against less formal institutions which may be positive as to their contents, but problematic in respect of guarantees. At present, the known forms in the socialist countries are the following: plebiscite, referendum, meetings of the constituents, meetings of the citizens, village meetings, social committees, civil committees. At least these are the forms established in recent constitutions which actually operate. (I shall discuss the organs of social nature, which perform some function of the administration of justice, not here, but later, with the model of the administration of justice. Similarly, I shall mention the democratic institutions of self-administration at their proper place, i.e. in connection with economic activities.)

The various constitutions establish the institutions of direct democracy on different bases. Chapter III (part b) of the Declaration of the Czechoslovak Constitution of 1960, reads as follows: “While developing socialist statehood we shall perfect our socialist democracy, by increasing the direct participation of the working people in the administration of the State and in the management of the economy . . .” Paragraph /4/ of Article 2 of the Constitution makes the same idea more precise, first of all in connection with the institution of representation: “Representative bodies and all other state organs shall rely in their activity on the initiative and direct participation of the working people and their organizations.”



Article 18 connects direct democracy with the constructional and organizational principle of democratic state centralism, still more clearly: "The central direction of society and the State in accordance with the principle of democratic centralism shall be effectively combined with the broad authority and responsibility of lower organs, drawing on the initiative and active participation of the working people."

The Yugoslav Federal Constitution makes an approach to this question from another angle. The citizens' rights in the direct democratic institutions arise within this scope as the question of the *position of the working people in the given social-political system*. According to Article 88, "Authority over and management of social affairs shall be vested in the working class and all working people." Article 89 declares among others: "Working people shall exercise authority over and management of social affairs through decision-making at assemblies; through referenda and other forms of personal expression of views in basic organizations of associated labor and local communities, self-managing communities of interest, and other self-managing organizations and communities; . . ."

There are two important differences between these two formulations. One is that the Czechoslovak solution, due to the firm "state" character of the Constitution (although the Czechoslovak constitutional jurists do not accept this) affects only those direct democratic forms which are connected with the state organs, viz., with organizations enumerated in the Constitution and called state organs in the strict sense, but not with productive, supplying, cultural, etc. institutions. The other difference is that one of the cardinal institutions of the Yugoslav Constitution is the organization of associated labour by which they understand organs having no public power, i.e. all economic, cultural, social and other organs which have no such rights. A considerable part of the direct democratic institutions are connected with them. This difference is in close relation with the other one which indicates the proportion between the representative and the direct democratic organs in the constitution. As we have seen, the Czechoslovak Constitution made an approach to direct democracy through the representative organs—let alone the fact that it laid emphasis on democratic centralism. The Yugoslav Constitution, on the other side, starts from the principle of social self-administration (and not from statehood). And direct democracy is nearer to this than the representative system. It is therefore logical that it first mentions and enumerates the direct democratic institutions, and then it adjoins to these the representative institutions both in the social-political communities and the labour organizations. It is natural, however, that the Constitution gives expression to principles and trends and not to real proportions between the working of the various present organizational forms. It may well be that some other reality of these proportions will emerge when this or that model is being realized.

The plebiscite and the referendum are the oldest forms of direct democratic institutions of the guarantee system mentioned in most constitutions. It is difficult to draw the dividing line between the two institutions because we find rather different definitions even in the bourgeois literature. The most general distinction in West European constitutional law is that the plebiscite (voting of the people) is the independent, constitutional, statutory act of the enfranchised population, to which no co-operation whatsoever is required from the parliament, i.e. the plebiscite substitutes normal legislation; in the case of a referendum, however, the question is put to the voters following a preliminary resolution of the parliament, which means that the legal act is produced by a dual decision. It must be admitted nevertheless that in socialist legal literature no distinction is made between these two institutions and that the terms referendum and plebiscite are used without distinction. Kotok holds, therefore, that the referendum is the posing of a question to the people as a whole while the plebiscite—irrespective of its name—is the approval of some state resolution by means of popular vote which gives it a definite and compulsory nature.<sup>130</sup> We shall see later that the kinds of plebiscite and referendum are anyway, considerably different according to given constitutional systems.

The *Volksentscheid* (people's decision) held on March 26, 1968, on the Constitution of the GDR was a typical referendum. This voting, in the course of which the entire constitution bill was made a matter to be decided about—i.e. the bill could be adopted or rejected as a whole—was preceded by the following acts: the first draft was put to popular discussion; after this, the constitution bill was adopted with some 118 modifications by the People's Chamber, after which it was adopted by the population entitled to vote. Thus, to put in a simpler way, the process was the following: popular discussion, parliamentary resolution, referendum. This institution is mentioned in Paragraph /2/ of Article 21 of the constitution within the rights of *Mitbestimmung* and *Mitgestaltung* saying that "the will of the citizens is learned in the course of public voting." On the other hand, Paragraph /3/ of Article 65 declares: "Drafts of basic laws are, prior to their passage, submitted to the people for discussion. The results of such popular discussions are to be evaluated in the final drafting." So this institution rather points to the informal nature of the public discussion.

The Hungarian Constitution amended in 1972 mentions the direct democratic institutions in two passages, without going beyond general statements. Paragraph /5/ of Article 2 states—in discussing the social system—that "at their place of work and domicile the citizens take part in the administration of public affairs also directly." Article 68 declares the

<sup>130</sup> Ibid. p. 5.

following when discussing the fundamental rights and duties of citizens: "/1/ Every citizen has the right to take part in the management of public affairs; it is his duty to discharge his public functions conscientiously. /2/ The citizens may bring forward proposals of public interest to political and social organizations. They must be judged on their merits." Of the concrete institutions only the plebiscite was maintained on the constitutional level; it may be ordered by the Presidential Council of the People's Republic only in questions of national importance (Article 30, Paragraph 1).

Article 5 of the Soviet Union declares that "major matters of state shall be submitted to nation-wide discussion and put to popular vote (referendum)." At the same time, Paragraph 4 of Article 108 provides for two ways of legislation: "Laws of the USSR shall be enacted by the Supreme Soviet of the USSR or by a nation-wide vote (referendum) held by decision of the Supreme Soviet of the USSR." Thus referendum is facultative. (Resolution No. 764 of the Presidium decreed the legal regulation of referenda; according to the decree the draft shall have been submitted by the end of 1982.)

Another characteristic form of direct democracy is the *meeting of constituents, the meeting of citizens, and the village meeting*. At these meetings enfranchised citizens discuss political, social and administrative questions in regional units of various size, make suggestions or pass resolutions on these matters. Originally—at least in its present form—the meeting of constituents was an institution that had developed parallel to the elections. Article 29 of Act III of 1966—the Hungarian Electoral Act amended considerably in 1970—assigns a role to this institution in connection with the nominations, and Article 59 in connection with recall. According to Article 60 of the Czechoslovak Electoral Code of 1964, decision on recall is reached in open vote by the public meeting of the constituents.<sup>1</sup> (The Bulgarian Act of 1972 on the conditions and procedure of recalling deputies and council members assigns a role to the meeting of constituents only in making a motion for recall because the procedure of recall is secret.) So it is clear that in these cases a direct democratic institution is connected with representative democracy.

Other functions of these meetings were extended by some new socialist constitutions and by laws on local and regional organs.

According to item 15 of paragraph III of the Act on the Bulgarian people's councils, the village people's council is under obligation to submit important local questions to the constituents for discussion. The Czechoslovak Act on the national committees mentions so-called civil committees; they are not direct democratic institutions, but organs elected at the *public meeting* of the citizens for four years and their function consists in keeping the villages tidy, preserving and maintaining the assets of dwellings (they are similar to the Hungarian tenants' committees).

The Soviet model regulation of 1968 introduced a two-level solution; Article 67 re-established the village meetings (general meetings), and Article 68 introduced social committees (house committees, settlement, street and block committees). The village meetings (meetings of the citizens of settlements) hold debates on the following questions: area development, provision of public utilities, communal, social and cultural supplies for the population, the maintenance of public order, the report of the executive committee of the village and settlement Soviet, and all questions assigned to them under the laws of the Union Republic. Laws and other norms in force—including the important resolutions of the local Soviet—are made known and explained at the village meetings. Decision on the voluntary financial contribution by the inhabitants comes within the exclusive jurisdiction of the village meetings. The social committees are elected by the village meetings, by the meetings of citizens, and these committees are responsible to them.

The Hungarian Council Act of 1971 established in villages the village meeting to inform the population, to learn about the opinion of the people and to discuss the report on the work to the joint councils. Matters to be discussed are the medium-term economic plan and the budget, the general development plan of the village, other important plans and their implementation. This provision is of compulsory force for villages with joint councils. The village meeting must be convoked every year separately in each village under a joint council.

Greater emphasis than before was laid on the institution of village meetings by the 1972 amendment of the Polish Council Act. Village foremen's districts are made up of individual villages or more villages belonging to a large village administration unit. The village foreman, elected by the villagers, convokes the village meeting for discussing the social, economic and cultural problems of the village, and for discussing the political issues of the state (Paragraph /2/ of Article 94, Paragraph /1/ of Article 96). On discussing the Soviets, Article 149 of the Soviet Constitution also mentions the role of meetings held at work-places and the citizens' places of residence.

One of the substantial differences between the two groups, the plebiscite and referendum on the one hand, and the meeting of constituents, village meetings and social committees on the other, is that the plebiscite and the referendum pass for the most part final resolutions deciding a given case, while the village meetings, meetings of constituents and social committees pass resolutions most of which decide a case but occasionally and are usually submitted as a suggestion to a representative or other organ.

Summing up the present position of direct democracy within the socialist state-organizational model we may state: after a long stagna-

tion—especially after the 20th Congress and after the time that the idea of socialist self-administration had come into prominence—the importance of the institution of direct democracy came up in various forms in most socialist countries. These institutions first appeared in the literature, then in the field of legislation and we see different solutions in the different countries even today. *The usefulness of legally irrelevant institutions is reduced by the absence of guarantees, and by their non-compulsory nature.* Therefore, the idea of *placing obligatory, or partially obligatory direct democratic institutions—defined by guarantees and legal consequences—on constitutional or statutory foundations* was raised almost everywhere. In addition, attempts are being made to connect *the less formal but more substantial institutions of public discussions with the institution of referendum.*

It goes without saying that in our days it is a demand of the population to take part in decisions of political nature also formally. This is the way to render the development of democratic institutions up-to-date in the socialist constitutional life of our days without pushing the other form of socialist democratism in the state, the representative system, into the background. Yet the *direct democratic institutions* are, in a sense *checks and balances not only to the official apparatus, but to the representative institutions as well.*

## CONSTITUTIONAL AND EXTRA-CONSTITUTIONAL FORMS OF THE ECONOMIC PLANNING ORGANIZATION

### 1. The Economy and the Constitution

At the beginning of socialist constitution-making, an interesting feature emerged in the constitutional declarations and in the first fundamental laws, proving that legislation in the socialist countries had much more real and deeper roots than the preceding constitutional forms. Part II of the *Declaration on the Rights of the Toiling and Exploited People* (January 1918), and Chapter II of the first part of the Soviet Russian constitution of 1918, gave such a concrete and realistic analysis of economic questions as no bourgeois constitution before. This was, in essence, an economic-political programme which was carried into effect very soon, and which meant that the proletariat seized power also in the economic field. The nationalization of land, the expropriation of factories, industrial plants, mines, railways and other means of production and transport, the taking banks into public ownership, the introduction of the universal obligation to labour; all this meant the creation of a new socio-economic basis accompanied by the building up of a political structure of entirely new contents. The later Soviet constitutions and those of other socialist states no longer included theoretical programmes about economic questions, but only outlined the foundations of an already established economic system. I use the expression "outlined" because the older socialist constitutions were actually concerned with nothing more than the principal economic questions, i.e. production relations. It is an interesting fact that the effects of the economic basis on the state organization were not included in the older constitutions and not even in a number of new ones. Most of these constitutions could be characterized by saying that a simple scheme emerged in them: the economic basis (production relations)—questions of sovereignty partly arising from this—and, separate from these, the mechanism of the state organization. It is quite evident that the *direct influence* of the economic basis on the trends of the state-organizational model was much greater in reality.

Although one of the new constitutions, the Mongolian one of 1960, devotes a whole chapter to the "fundamental economic principles and

functions of the state", this means nothing more in respect of the state organization than registration and supervision as well as the description of the function of the state in respect of the national economic plan and budget. The Czechoslovak Constitution enacted in the same year went far beyond this position. The economic system having been defined clearly in Article 8, Article 11 already mentions the economic organizations of the state as ones to which the management of certain parts of the state property are entrusted (these are mainly the national enterprises). Paragraph /3/ of the same Article declares that the economic activity "is directed on the basis of democratic centralism". This means that the Czechoslovak constitution tried to handle the problem of the economic basis at least in its connection with the production units of the state organization.

The Rumanian Constitution of 1965—amended in 1974—adhered to the traditional regulation of the economic basis in Articles 5—7 and 9. As concerns the relations with the state organization, they actually appear in one instance only, namely in the amended text of Article 80, and in a fairly novel manner at that. A non-state organization is included here in the Council of Ministers—the supreme organ of state administration—by making the president of the National Federation of Agricultural Production Co-operatives *ex officio* member of the Council of Ministers in the rank of a minister. This provision of the Constitution is aimed at drawing this co-operative organization into the co-ordinating activity of the Council of Ministers and subordinating it thereby to the council in a certain sense, not by hierarchy, but on the basis of participation and joint decision.

The economic basis and the forms of concrete economic activity were completely separated in the Constitution of the GDR. Paragraph /1/ of Article 9 defines the socialist production relations as the foundation of the people's economy. An important provision of Paragraph /3/ of this Article is that "the people's economy of the GDR is a socialist planned economy", and that "the central state direction and planning of the basic questions of social development is connected with the individual responsibility of local state organs and enterprises and with the initiative of the working people". The second layer of constitutional regulation in this respect is to be found in Chapters 2 and 4 of Part II. Here, without any precedent in the tradition of socialist constitution-making, the position of factories, plants, towns and villages in a socialist society, the socialist production co-operatives and their rights, are dealt with. The most important statements from the point of view of our study are the following: "The socialist enterprises, towns, villages and associations of villages are communities of *individual responsibility within the framework of central state direction and planning*, and the citizens are "working and

shaping their social conditions in them" (Article 41, italics are mine, O.B.). On the other hand, the Constitution declares that the socialist production co-operatives are "voluntary associations of farmers for the purpose of joint socialist production, for the ever-better satisfaction of their material and cultural needs and for supplies to the population and the national economy. They are themselves responsible, on the basis of law, for shaping their working and living conditions" (Paragraph /1/ of Article 46.) Yet this Constitution says little about the role and pertinent organization of the state organs in the development of the economic basis, how this organization reacts to the changes taking place in the economic basis; or, if no such modifications take place, how the state organization changes in the various fields in accordance with the targets of the economic policy.

Chapter II of the Bulgarian Constitution of 1971 bears the title "Socio-Economic Structure". The socialist property and its forms, the advance towards homogeneous popular ownership, the objects of state ownership, co-operative property, the property of social organizations, private ownership, and similar questions usual in socialist constitutions are discussed here. Article 18 and 24 of the Constitution are new. The former says that "the economic organizations of the state perform their activities on the basis of economic accounting", while the latter declares that "the collectives of the working people participate through their directly elected organs in the direction of economic activities". Finally, economic activities are mentioned in connection with the people's councils in Paragraph /2/ of Article 114 where the constitution requires these organs to connect branch planning with regional planning in order to attain complex development.

The Hungarian Constitution amended in 1972 discusses the traditional economic questions in Chapter I.

Chapter I of Part II of the Yugoslav Federal Constitution of 1974 deals with the "social and economic system". This long Chapter (Articles 10 to 87) makes an approach to this problem mainly by discussing the means of production of associated labour, the responsibility and income problems of people working in the basic organizations, the self-administrative communities of interest, social planning, and the social system of information. Its nature considerably departs from traditional constitutional wording.

István Kovács says in his monograph that "at present it is a general requirement that each socialist constitution should reflect the forms of ownership as these existed at the time of the introduction of the constitution".<sup>131</sup> As we have seen, the constitutions—apart from a few

<sup>131</sup> Kovács, I. op. cit. p. 226.



exceptions—give only an outline of this basic question, and neglect the state-organizational consequences for the most part. In his cited work Kovács also refers to the fact that the constitutions—with the exception of the Czechoslovak basic law—did not really touch upon the organizational forms of the economy, of the administration of state property (the Soviet constitution amendment of February 1957 incorporated the national economic councils, the administrative organs of state industry in the Constitution but only on a provisional basis, as is generally known).<sup>132</sup> No provisions on the constitutional foundations of the co-operative organizations are contained in these constitutions, except for the new Constitution of the GDR.

Considering all this, the question is evident: is it possible or desirable at all to lay down the state organization of economic control in a *constitution*, and so to make it possible to regulate the basic features of a relatively long-term, but *changing* economic mechanism. As a matter of fact we must agree with those who, in the case of socialist constitutions, state as a minimum requirement the necessity of fixing the principal forms of ownership and the ruling production relations. But I consider problematic even to come forward with a demand for reflecting the economic system in the constitution in more than skeleton-like propositions. There are several reasons for this standpoint.

The first and most important of them is that the "*nature*" of *constitutions* must not be disregarded in connection with such demands. What I mean by this is the fact that the constitutions, being primarily (but by no means exclusively) political documents, come into being for the most part at a time when the country in question undergoes great, not seldom revolutionary, but certainly historic changes. This is the moment at which it is most difficult to count with all the economic consequences of such changes. Too detailed regulation, excessive specification in the constitution is therefore most harmful exactly in the field of economy, because this might hinder drawing the full economic consequences of political development. On the other hand, the *transposition between economy and law is not only conceivable, but, even imperative in a socialist country*, for it is in this way that a part of state control can be ensured with adequate legal means. (This is a necessity not only in socialist, but also in all capitalist societies where law is used for economic purposes in different ways.) However natural and expedient this may be in decisions about detail, it is all the more complex and sometimes harmful for setting the general targets of economic policy. In all probability, it is true that the inevitably concise manner of expression of any constitution would only simplify the statements of economic policy, and would put

<sup>132</sup> Ibid. pp. 254–256.

"legal words of command" in the place of their dialectics. At last, we must consider the fact that, due to the attempts at constitutional stability, many economic conclusions become obsolete sooner than other provisions of the constitution. (Let me mention two institutions belonging to the sphere of the economic basis which had worn out with dangerous rapidity in the original Hungarian constitution: community property mentioned in the former Paragraph /1/ of Article 4, and property acquired through work mentioned in the former Paragraph /1/ of Article 8. The first was devoured stock and barrel by the institution of socialist property a few months after the adoption of the constitution; the second caused no little problem to constitutional jurists because of its identification with personal property, defined—among others—in the Civil Code. We need not speak in more details about still more serious problems arising in some bourgeois countries, such as the interpretations of economic policy by the Supreme Court of the United States during the New Deal through which the Court tried to curb state intervention in the name of liberalism—in vain, of course.)

By taking into account the logic of the regulation levels, we get the following pattern: the problem of the *economic basis*, i.e. fundamental statements on economic relations (the principal forms of the ownership of the means of production, the principal characteristics of state and co-operative property, etc.) as well as the rules relating to the ownership of non-productive means—or minor means of production—(personal property, private property of non-exploiting nature, etc.), have been treated on the *constitutional level* in socialist countries. The *legal regulation of economic policy* (especially the normative aspects of changing over to a new economic system) has been solved *on the statute law level* for the most part; finally, the *direction by branches* has been solved on a lower, *specialized administrative level* (but this field got narrowed down wherever there was a considerable growth in the independence of enterprises). There is no uniform view as to the necessity of fixing constitutionally—in addition to the economic basis—such stable elements of the economic-planning organization that are in closer, more immediate relationship with the economic basis, such as an outline of the central state organs attending to these tasks, the rights of enterprises, or the rights of self-managing or directive organs.

Based on all this, we must draw a very important conclusion: It is a special sector of state life, decisively important and of homogeneous nature, that is involved here. The correlation of economy and state necessarily allows the state and its agencies a large scope of action after the expropriation of the expropriators, even if the system of self-administration is interpreted in an extreme way. (The extent of legislation—and constitution-making—in Yugoslavia proves that regulation by the state is a

natural measure; let alone other problems not interpreted as of "private-law" quality.) Where the preponderance of *state* property persisted, the proportion of state functions worked out accordingly, and the state did not "retreat" from the economic field even during the establishment of new economic systems; only the methods of control were shifted, restricting especially the operative methods of management.

Relatively little care was devoted to the uniform treatment of this coherent field of state, law and constitution in the socialist countries. This problem was raised in earlier years especially during the debates about economic law and its discussion was started at that time, but still not to the extent as justified by its fundamental importance. It was Hochbaum who tried to define the position of the economic factor from the constitutional point of view in the constitutional law of the GDR. According to his expression, an "*economic constitutional law*" (*Wirtschaftsverfassungsrecht*) is required to regulate the questions of the economic planning organization in the same uniform manner as the entire mechanism of other fields of constitutional law, of legislation for example. The main trouble is, says Hochbaum, that the constitutional jurists did not pay enough attention to this problem despite the fact that everybody recognizes—at least in words—the important role of the economy in a socialist state, or the economic role of the socialist state.

"The constitutional law of the socialist states," writes Hochbaum, "... must always, and particularly, be the constitutional law of economic control, i.e. it must be a socialist economic constitution; this is a realization which for many years had been suppressed by the restriction of socialist constitutional theory, by a restrictive comment on effective constitutional provisions, although this realization is of decisive importance for the constitutional shaping of the socialist people's state of the future".<sup>133</sup> Hochbaum tried to present an outline of "economic constitutional law". The following groups of issues belong to it: 1. the fundamental economic role of the socialist state; 2. the economic basis of the state; 3. the principles of the economic policy of state control; 4. the scientific principles of economic management; 5. the authority of the supreme organs of authority in directing economy; 6. the system of state organs directing the economy; 7. the socialist economic organization; 8. the social bases of economic control; 9. the financial-economic principles of economic control; 10. supervision, inspection and arbitration connected with economic control. Hochbaum concludes that some of the socialist constitutions deal thoroughly, or less thoroughly, with the first

<sup>133</sup> Hochbaum, H.-U.: "Grundlinien eines sozialistischen Wirtschaftsverfassungsrechts," *Wissenschaftliche Zeitschrift der Friedrich-Schiller-Universität Jena, Gesellschafts- und Sprachwissenschaftliche Reihe*, Heft 4, Jahrgang 14, 1965, p. 585.

five of these issues.<sup>134</sup> Although I feel that constitutional regulation is not too unequivocal in the constitutions of the countries cited as examples by Hochbaum, I admit that he has called our attention to an obvious trend by this enumeration. Yet what Hochbaum is speaking about is economic constitutional law, not an economic constitution. I agree with this view because the demand for framing a special "economic constitution" separated from constitutions taken in the old sense has, quite logically, not been raised till now. All those who emphasize the importance of the economic role of the state more vigorously than usual, take a stand for a uniform constitution even today in view of the fact that such a definition would detach the state from its economic function. *All* branches of the modern socialist organizational model influence economic activities (not only the organs of state authority and administration, but also the organs of the administration of justice which are not of purely economic nature or the procurators with the protection of socialist legality which among others ensures the uniform regulation of the economy). On the other hand, the given model of a given economy exerts lesser or greater influence on the various sectors of the state organization.

Thus economic constitutional law is not separate from "general constitutional law", it is rather merged with it. And economic constitutional law is not exclusively "constitutional" and it is not regulated solely by the constitution just like the other parts of constitutional law. Experience has shown that only a certain part of the norms can be included in any constitution. Even if this can no longer be regarded as satisfactory, it is just as improbable that problems like, say, the financial-economic basic factors of economic control should be included in the constitution however extensive the framing of constitution might be. The right way between a too loose skeleton law and one with full details must be found here, like in all other questions of constitution-making. And if extremely detailed regulation is to be avoided, we must reckon with the circumstance that specified subjects of economic constitutional law will be regulated not in the constitution, but by a regular Act of Parliament or by a legal norm of still lower degree.

Considering all this, it may be asked which economic matters should be included in the constitutional model itself. In my opinion, they are, first and foremost, the theoretical conclusions relating to the economic basis of the state, and to the connected economic function of the state. I am not sure whether short-lived tactical courses of the economic policy, or connected scientific principles of economic organization must be laid down on this high level, if only because of the fact that, in either case, theories of economic management science are involved which are difficult

<sup>134</sup>Ibid. pp. 587-588.

to sum up and whose transposition into legal concepts is little promising. What, however, requires constitutional provisions by all means is the economic authority of the supreme organs of state authority, representation and administration, the constitutional outlining of the system of organs which are in control of economic activities, including economic administrative organs, local and regional representative bodies, and the economic tribunals. But an outline of an economic-planning model can be efficient only if this "hierarchy" is presented in the constitution in its homogeneity. Finally—in accordance with the present and future developmental trends of socialist economic policy—the constitution must comprise the most important rules relating to the legal status of enterprises, factories and other economic basic institutions, to their position within the social mechanism, and to the role of social and self-management in these respects.

The regulation of other details must take place on the level of acts of parliament, or—in certain branches—on a still lower level of legislation while it must be guaranteed that the primacy of the constitution and other laws must be strictly observed.

## 2. The Manner of Regulation in the Various Models

As I mentioned above, there are two important questions of "economic constitutional law" which, in all probability, cannot be fixed on the constitutional level: the foundations of the economic policy of state control, and the scientific principles of economic management. The reasons I gave for my standpoint were that it is hardly possible to compress these principles into a formula which could be reconciled with the usual wording method of a constitution. One more argument is to be added. Both sets of problems are related to the relatively short-lived *tactical* regulation of economic life. It would hardly be appropriate to render the structure of a constitution unstable by including rules of temporary, tactical nature in it. True, the provisions I have termed tactical have no little influence on certain units and branches of the state organization. Still, it is probably better not to formulate constitutionally such organizational changes from the outset. (I think it characteristic that the economic principles of war communism, of the new economic policy (NEP) and the resulting questions of organization were not elevated to the constitutional level during the constitution-making period of 1918 and between 1923 and 1924. It is also important to mention that the constitutional amendments of 1957 in Hungary left out the enumeration of the ministries. This meant actually the removal of the leading economic administrative organs from the constitution; experience has shown that

the constitution did not become poorer through this amendment, only its structure did not follow the tactical changes taking place in economic control.)

*No constitution is supposed to become the defender of any single economic policy.* If the constitution of a socialist country were the defender of a single economic-policy model, this certainly would entail the consequence that the constitution itself would have to be changed very often, even as regards its foundations and system. At the same time, it must be laid down on the same level what the limits of the tactical mobility of economic policy are under the given relations of production. It is quite obvious that if a constitution—here I refer to the Czechoslovak one of 1960—declares that “within the limits of the socialist economic system small private enterprises, based on the labour of the owner himself and excluding exploitation of another’s labour power, shall be permitted.” (Article 9), this sets limits to the legalization of any attempt which, by making reference to reasons of economic policy, wishes to permit, or to assist, the establishment of petty capitalist enterprises. This means that the regulating activity of the constitution presupposes a certain minimum-maximum limits *within* which the detailed measures of economic policy can move. If the changes of economic policy go beyond these limits, their unconstitutionality must be declared, or the constitution amended. We must conclude, however, that this is a layer of the constitution in which the legal form is only extrinsic, while the contents of the norm are otherwise *economic*. It follows from this that the “violation of the constitution” is an infringement of the law only in the formal sense, and that it is hardly possible to establish this fact by legal standards. For the organs protecting constitutionality it is therefore not sufficient to take action on the basis of accepted modalities. The question whether a given measure of economic policy breaks through the framework of production relations, of the economic basis laid down in the constitution, can be decided by the economist rather than by the jurist. This is another proof of the difficulties involved in the definition of the economic-planning function on the constitutional level. (Needless to say, to transpose the requirements of economic or scientific-technical management into legal terms, presents a generally known problem. This difficulty is increased in the case of the constitution by the fact that its special manner of expression as well as the defined possibilities of regulation, give no room for more detailed explanations and interpretations.)

The economic side of the model was regulated in the socialist countries in various ways. A few constitutions of recent years—especially in countries where it was attempted to introduce a new economic policy—expanded the basis of such economic regulation. One of the most interesting examples in this respect is in the constitution of the GDR.

Here we find the following most important fields of regulation: "The basic principle of managing and planning the people's economy and all other social spheres is prevailing in the GDR . . ." (Article 9, Paragraph /3/). "Socialist property consists of the nationally-owned property of society as a whole, the joint co-operative property of collectives of working people, as well as the property of the social organizations of the citizens" (Article 10, Paragraph /1/). As I have mentioned, the position of socialist industrial enterprises, socialist co-operatives of production is specially defined in Articles 41—42 and 46 of the Constitution. Production relations, the principal forms of production, and the principles of state control were laid down by the constitution in this way. Yet, at the same time, practically nothing substantial is declared about the performance of economic functions in the state-organizational part of the model (only the state plan is mentioned in connection with the People's Chamber). The leading economic organs whose system was shaped in 1963 and after, do not figure in the constitution, although this system overlaps the powers of constitutional organs in many cases. It appears clearly from these provisions that, at the time of the economic reform, the framers of the constitution did not want to tie the legislators' hands too much in their search for expedient solutions of economic control.

The Hungarian regulation may serve as another example. The regulation of the economic model on the constitutional level was evidently not considered at the time when the new constitution was framed. During the introduction of the economic reform, it was the government which produced a regulation with uniform spirit from the detailed rules, and this affected the various state-organizational aspects of economic control. The jurisdiction and organizational position of many organs never mentioned on the constitutional level before were regulated at that time. The regulation in Hungary shows that uniform economic regulation is possible, may even be necessary, on a lower level even if there is an older constitution, while the rather broad constitutional framework of this is duly observed. It is another problem that practically nothing of all this was raised to the constitutional level during these amendments.

Finally, a third form of regulation must be mentioned. In this case the level of the constitution and that of the statute laws are left altogether intact, and a detailed regulation is produced on a lower level which influences the earlier form of economic control without resulting directly in an immediate transformation of the economic model. Here I refer to the regulation of the operation of socialist productive enterprises of the state which was adopted by the Council of Ministers of the Soviet Union on October 4, 1965. Its most important statement is this: "The socialist productive enterprises of the state are the basic units of the Soviet Union's national economy. The basis of their functioning is the co-ordination of

central direction with the economic independence and initiative of the enterprises" (Article 1). The regulation stated the rights to be exercised by the management and by the trade union committee, and the ways in which the working collective takes part in the solution of production problems (production conferences, staff meetings, etc.). The situation created within the enterprises by this regulation will in all probability influence the higher levels of economic management. This regulation, however, affected only the workshop level. (The participation of workers and employees in matters of management is regulated in various ways in the socialist countries. Workers' councils, workshop committees, other forms of participation—usually through trade unions—extend the possibilities of direct participation not only in these matters, but in state administration, too.)

In the new Constitution of the Soviet Union both the number and the importance of provisions related to the economic system have grown. Apart from the forms of property (state, co-operative, other socialist types and personal property) and the principles related to them, Article 16 of Chapter 2 also includes some principles that affect economic policies: "The economy is managed on the basis of state plans for economic and social development, with due account of the sectoral and territorial principles, and by combining centralized direction with the managerial independence and initiative of individual and amalgamated enterprises and other organizations, for which active use is made of management accounting, profit, cost, and other economic levels and incentives."

I have presented three different methods by way of example. It appeared from each of them that both the uniform and multi-stage regulations are just as necessary as in the case of other state-organizational models. When enumerating the requirements of regulation by their principal features, I have the following in mind: (a) the definition of the *production relations*, of the *economic basis*, and of the *leading economic functions* of the state must be matters of *constitutional* regulation; (b) similarly, *the main central and local organs of economic management* must be defined in the constitution; (c) the definition of the most important *courses* of the *economic policy* is a matter of *legislation*; whereas (d) the organs of *supervision*, *inspection* and *economic judicature* and their most important jurisdictions shall be laid down in the *constitution* for the economic field; (e) the regulation of *branch-management* is the responsibility of *specialized administration*, while *co-ordination* is the task of the supreme organ of state administration, i.e. of the government. The so-called economic constitutional law must become the same concern of socialist constitution-making as issues of traditional constitutional regulation.



## THE ADMINISTRATION OF JUSTICE

### 1. The Administration of Justice and the Judicial Monopoly

A clearly distinguishable function covering a special field emerges from the division of labour in state activities: the application of the law. The organs performing this function through law application consolidating legality, protecting the rightful interests of the state and its citizens and propagating the rules of socialist morals, are called the organs of the administration of justice.

In the model provided by the Soviet Constitution of 1936, this organization was the third type besides the organs of state power and administration. (This was completed by the procurators' organization, as the fourth organization. This was discussed in Chapter IX of the Constitution together with the courts, which is all the more striking since they were separated from one another even on the level of the Union Republics.) Although the term "the judicial function" is used in this constitution alternately with the term "the courts", I might as well say that this constitution regarded the courts (the ones enumerated in the constitution) as the third organizational type. Thus it is clear that conceptual and organizational problems appear already at the first glance.

The method to be regarded as general in the socialist theory of constitutional law is to take as the starting point for the definition the various types of state organs, mainly their functions and spheres of tasks. Although this rule cannot be applied strictly in every case (e.g. the popular-representative and administrative organization), attempts are made to consolidate given jurisdiction and to point out their specific functions in this way, even if these dividing lines are not fully firm and constant. The demand for defining the types of organs does not mean as if it were attempted to deprive certain organs of their characteristics which render them suitable for performing their particular function. I therefore admit that we can, and must, accept dissimilar procedural forms and organizational schemes for attending to the same principal task in different situations. (In connection with the organs of popular representation I indicated the possibility that organs of popular-representative or

administrative nature may be assigned alternately for performing the same function in regional units of different size, depending on whether the solution of a given task affects the larger part of the population directly, or not. <sup>135</sup>)

It is true, that the dividing lines between given organ-types are not strict, nevertheless it is necessary to determine, to separate them, and if there is no room for including a given organ in the framework of types known and accepted so far, new types must be created. This is necessary not merely for the sake of systematization, but for pointing out and grouping their *most typical* functions, and for promoting this way the expediency of their activity. One thing is clear anyway: the requirement has been raised everywhere that the "borderland" between constitutional law and constitutional reality should not grow wider even in the field of the state organization. Therefore it must not occur that the constitution, or other important organizational statutes fail to enumerate important and actually operative organs of the state which, perhaps, are of greater significance than other functioning organs created on a codified basis. Uniformity or parallelism of regulation is of great importance because of the fact that it is only this way possible to ponder thoroughly with what forms of organization it is necessary to introduce a different system owing to the specific tasks of a given organ. In the course of this we have to determine the identical or dissimilar rules of guarantee to be applied.

Having considered all this, we must return to the principles of delimitation. If we do not want to employ merely formal distinctions, we must start from the tasks of the organs in question, just as it has been done so far by the majority of the scholars of socialist constitutional law. However, to give a general definition of tasks is not easy, since a number of expressions we got accustomed to in the case of organizational schemes fail to provide exact definition and may even be often misleading (e.g. orders, measures, organization, protection, or the like). We may even conclude that, due to some deficiencies in legislation, certain elements may be included in the enumeration of functions on the levels of the constitution and laws which are by no means characteristic of the organs concerned, but are usually included because the routine of the preparation of legislation does not allow their omission. This is the case, among others, with the obligation to protect socialist legality. Instead of pointing out this duty of all state organs irrespective of their functions, it is mentioned in connection with each of them whether they are administrative, local, judicial, supervisory, etc.—and, moreover, in the least appropriate instances where, the legislator wishes to present their special functions. (Needless to say, this is "only" a formal problem of legislation since—this

<sup>135</sup> Bihari, O.: *Socialist Representative Institutions*, Budapest, 1970, p. 95.

duty being mentioned or not—every organ performs the very function for which it is suitable resulting from its organizational structure.) Still, we might say that this method of defining a function—is often misleading even as regards the institution itself. It is therefore necessary to give an accurate, realistic definition of tasks, and to disregard such irrelevant matters of routine work if we are to conduct scientific investigation. This means that the real, principal tasks must be elaborated from the statutory framework. If one type of organs is to be separated from the other, we must not disregard the fact that seemingly procedural forms may have a greater than expected influence, on the specification of the organ in question, moreover, that a similar picture may emerge even when the system of guarantees is discussed. Therefore: the basic principles of separation must be found in the tasks of the organ concerned, but questions of organization, procedure or guarantees may often considerably affect the result of this study.

If we use the first determinant, I may say that what we generally *understand by the administration of justice is the settlement of individual cases of legal dispute on the basis of statutory provisions*. (For this attempt at definition, I have eliminated other aspects of procedure or guarantee.) The case may be one of criminal, civil, or labour-law. In the administration of criminal justice, proceedings against acts which are dangerous to society, i.e. violate or endanger the state, social, economic system, the person and rights of the citizens are involved. This means that the administration of justice in such cases consists in the imposition of legal disadvantage in order to correct the perpetrator and to prevent other members of the society from committing criminal acts. In such cases, the courts administer justice in the strict sense of the term by imposing legal disadvantage, i.e.—expressed figuratively—they create an equilibrium between the violation of law and the imposed legal disadvantage. The purpose of judicature in legally disputed matters of civil law and labour law is different, because here the personal and property rights of the citizens and their organizations are protected on the one hand, and social property is protected particularly on the other. In labour law, the rights and obligations arising from the legal relation of employment between employee and employer are protected. The lawful situation is to be restored in these cases, too, and a minor legal disadvantage is imposed with the aid of which the perpetrator and other persons are prevented from committing further illegal acts.

As we have seen, the principal task of the administration of justice is the restoration of the lawful situation, the imposition of legal disadvantage and this is the activity through which the courts perform also their educative function. As regards their working at the restoration of the lawful situation and the imposition of legal disadvantage, not only

criminal and civil judicature in the strict sense, belong to the conceptual sphere of the administration of justice in the broader sense; also the activities of a number of other organs belong to it, including the administrative and police organs dealing with so-called petty offences or infractions (here the legal consequence is less disadvantageous, because the conduct, the behaviour is less dangerous to society); social tribunals dealing not only with legal matters but considering moral conduct as well (this is the organ where in the establishment of legal consequences both the legal and moral retribution can be found and not always separated from each other); the labour courts and arbitration committees (this is an organization to settle, labour disputes outside ordinary civil courts and its activity is aimed at restoring the former lawful state); state arbitration and economic committees of various levels and functions (they usually proceed in cases relating to the breach of contract and other disputes in the law of property arising between enterprises, factories, organs, belonging to the socialist sector); and courts of arbitration (special organs passing judgments in civil matters). All these organs, which differ from one another in several respects, are administering justice as to the contents of their operation provided that we accept the thesis that we understand by this concept the settlement of individual, legally disputed questions on the basis of positive law where the organ concerned tries to restore the lawful state by imposing legal disadvantage on certain persons or by employing *in integrum restitutio*.

In my opinion, the homogeneity of the judicature is proved exactly by the fact that the organs I have enumerated, or most of them, today perform the aforesaid functions in socialist countries. Consequently, we must regard all organs that act in this sphere, irrespective of whether they are enumerated in a constitution or other statutes on the judiciary as parts of the judiciary. This conclusion is supported by the fact that, compared with the administration of justice in the Soviet Constitution of 1936, the latest socialist constitutions present a wider horizon of the judicature, or do not define its sphere as strictly as the earlier constitutions (as the Hungarian Constitution of 1949, for example). The Czechoslovak Constitution of 1960, the Yugoslav Federal Constitution of 1974, the Constitution of the GDR amended in 1974, the Polish Constitution of 1976, and the Soviet Constitution of 1972 are especially noteworthy among these considerations.

The present problems of socialist courts cannot be explored from the aspect of comparing them with the forms established in bourgeois states.

The history of the socialist administration of justice began with the complete liquidation of the former judicial apparatus of Soviet Russia. The 1st so-called Decree of Soviet Authority Concerning the Court (No. 1) by the Council of People's Commissars—similarly to other provisions of

the October Decrees about the state apparatus—abolished the entire former bourgeois apparatus. It not only dissolved the so-called regular courts (the courts of the *okrugs*, the judicial chambers and the governmental senate with all its divisions), all military courts, naval courts, but commercial courts as well. According to Article 1 of this Decree, all of them had to be replaced by courts elected in democratic ways. The new local courts which replaced the dissolved courts of peace were set up by direct elections; they proceeded in specified civil and criminal cases (in civil cases up to 3000 roubles in dispute, in criminal cases where the punishment to be imposed was not more than two years of imprisonment). The local (regional) courts were elected by *raion* and *volost* Soviets (or where there were no such by the *uezd* town or province Soviets) or by direct democratic vote based on the orders of the Soviet congresses. These courts were made up of one judge and two assessors on duty (Article 2). According to Article 6 of the Decree, certain cases could be brought before arbitration tribunals; Article 8 set up revolutionary tribunals for the protection of revolutionary achievements. The first Decree was followed by the second one in March 1918 which contained detailed rules of procedure. A uniform regulation for people's tribunals was enacted on November 30, 1918.

It is characteristic anyway that the Constitution of 1918 did not mention the courts among the organs of the Soviet state. The aim of the first series of regulations was—besides the liquidation of the former judicial organization—to unify the administration of justice. It can be seen that all efforts were aimed at creating a uniform, non-specialized institution in which the administration of justice was not regarded as an expressly legal matter but exclusively as the problem of socialist political conscience. A resolution of the 8th Party Congress held between March 18 and 23 in 1919 states the following on this: "Since proletarian democracy has assumed all power and has liquidated the organs of bourgeois rule completely—the earlier system of courts—the slogan of bourgeois democracy 'The judges shall be elected by the people' was replaced by the slogan of proletarian democracy that 'The judges shall be elected from among the ranks of the working people, and only by the working people'. This slogan was carried into effect in the whole judicial organization . . . In place of the innumerable former courts of various systems and many instances, Soviet power established the uniform people's tribunal, simplified the judicial organization and made it fully accessible to the population . . . Soviet power, having annulled the laws of the overthrown governments, ordered the judges elected by the Soviets to enforce the will of the proletariat by applying its decrees and, if there were no such decrees or they were inadequate, to be guided by the socialist sense of justice."<sup>136</sup>

The regulation of the judiciary on the all-union level was first included in Chapter VII of the Constitution of 1924. The principal task of the Supreme Court was stated in Article 43 as the protection of revolutionary legality. Jurisdiction of the Supreme Court was summed up in five points: (a) to give directive interpretations to the supreme courts of the Union Republics in questions of federal legislation; (b) the revision of the decisions, civil and criminal judgments of the supreme courts of the Union Republics (on the basis of the presentation of the procurator of the Supreme Court of the Union) if they were contrary to federal legislative acts or violated the interests of other Republics and these protested against them at the Central Executive Committee of the Soviet Union; (c) giving expert opinion on the constitutionality of the provisions of the Republics on request by the Central Executive Committee; (d) decision on conflicts of jurisdiction between Union Republics; (e) proceedings in oppression cases committed by high-ranking federal civil servants. The Supreme Court of the Soviet Union consisted of 11 members of which the chairman, the deputy chairman and 4 members were appointed by the Presidium of the Central Executive Committee of the Soviet Union (the other 4 members were the presidents of the Supreme Court Plenum of the Union Republics, the fifth was the representative of the OGPU, the Unified State Political Administration. This fact itself shows—as is stated also in point 43—that the Supreme Court of the Soviet Union was subordinate to the federal Central Executive Committee. (The Constitution used the customary Russian expression for “subordination”: “co-ordinate” to the Central Executive Committee). This subordination is also evident from the spheres of authority I have enumerated. It means that, if this organizational pattern is given, the realization of the independence of the judiciary in its present sense was out of the question; the judges were subordinate and under the instructive authority of a partly legislative, partly executive organ, except for individual cases.

According to the Constitution of 1924, the Supreme Court of the Soviet Union proceeded in plenary sessions and through its various other organs. The latter were specialized: there were civil, criminal, military and military-transport collegia. This specialization increased later on, and by the time of the constitution amendment of February 1935, the Supreme Court had six specialized organs in addition to the plenary session: the judicial supervisory collegium, the civil, and criminal, the military, the transport, the water-transport collegia and the special collegium. It is evident, then, that specialization was carried through mainly within the framework of the regular judicial organization.

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<sup>136</sup> Resolutions of the Congresses, Conferences and Central Committee Plenums of the CPSU, Part I, (In Hungarian), Budapest, 1954, pp. 487–488.

The fundamental alteration of the judiciary in the Soviet Union was introduced by the Constitution of 1936. Chapter IX deals with basic regulations for the courts and the procurator's office. Compared to the constitutional model of 1924, the changes consisted in that most courts were elected for five years by the Soviets of the corresponding level (Supreme Soviets), while the lowest people's courts active in *raions* (districts) were elected for three years by the citizens, by universal, direct, equal and secret suffrage. The independence of the judiciary was emphasized by Article 112 of the Constitution as follows: "Judges shall be independent and subject only to the law." This independence appeared also from the Constitution in that the courts proceeded not subordinate to some organ, but performed a function specified constitutionally. The sphere of authority and tasks of the courts were not affected by the new Constitution. But the organization as such was defined more or less exclusively: "In the USSR, justice is administered by the Supreme Court of the Soviet Union, by the Supreme Court of the Union Republics, by the regional and *krai* courts, by the courts of the Autonomous Republics and Autonomous Territories, by the district courts, by the special courts established by a resolution of the Supreme Soviet of the USSR, and by the people's courts." It appears from this enumeration that it was actually the so-called regular courts that were vested with general jurisdiction, while other special courts could proceed only on the basis of special resolutions. But the latter courts were established within rather narrow limits by the Act of August 1938 concerning the Judicial Structure of the Soviet Union and that of the Union and Autonomous Republics. According to Article 53 of this Act, only the following special courts were set up: the military tribunals, the line courts for the railway and water-transport systems. The pattern of the collegia of the Supreme Court was not different either: they were the criminal, civil, military, railway and water-transport collegia. Thus the Constitution—and judicial structure Act—interpreted the administration of justice in its narrowest sense. What was regarded as judicature, the administration of justice, was the activity performed within the scope of traditional criminal and civil court proceedings (the latter including military cases and the two kinds of transport). It is a known fact that, at the same time, arbitration—which aimed at the protection of the implementation of the economic plans—was introduced in the economic field in the Soviet Union. This branch, however, was never included in the framework of the judiciary on the constitutional level. Following the first attempt in 1922 (when this organ served for settling property disputes between socialist organizations and was subordinated to the Council of Work and National Defence until it was abolished in 1931), the system of arbitration was established in 1931. These tribunals of arbitration were subordinate to the supreme economic

councils of the USSR, of the federal and Autonomous Republics, then to their people's commissariats, and, finally, to their councils of ministers, to the executive committees of the Soviets, ministries and other organs of national authority of the same legal status, and to co-operative associations. Certain ministries (the Ministry of Metallurgy, for example) established local arbitration tribunals later on, and such arbitration tribunals were set up in a few cities subordinate to the commercial section of the Soviets' executive committees.<sup>137</sup> The jurisdiction of arbitration was extended in recent years, as well, and legal disputes between socialist organizations—with the exception of the kolkhozes—were referred to tribunals of arbitration in 1959.

The statutes for the State Tribunal of Arbitration were approved by the Council of Ministers of the USSR in 1960. Article 1 states: "The State Tribunal of Arbitration acting subordinate to the USSR Council of Ministers is the organ for deciding major and important legal disputes arising between state, co-operative, and other social enterprises, organizations and institutions." Emphasis is laid first of all on the protection of property rights and lawful interests, after which the statutes mention the consolidation of co-operation, activity for the observance of legality and for rendering assistance in the discharge of obligations. Thus the general definition of the tasks contains no such element which could not be realized within the proceedings of regular courts. Later, however, the interpretation of certain regulations, the invalidation of certain contracts, went beyond the usual judicial functions. The head of the State Tribunal of Arbitration, the Chief Arbitrator, and his deputies were appointed and discharged by the Council of Ministers of the USSR.

The introduction of arbitration and the extension of its jurisdiction reduced the sphere of activity of regular courts belonging to the judiciary in the stricter sense. Arbitration extended to ever wider fields, but was not included in the constitution while the traditional "regular and special courts" were. Does this fact not indicate that the authority of constitutional regulation was decreasing at that time, and that it was not always the most important organizations that were drawn into the sphere of constitutional regulation?

Yet the standpoint held in socialist jurisprudence for a long time was that arbitrage, this organization of economic nature, must be regarded as a part of the administrative organization of the state, and must therefore be included in the passages of the constitution relating to state administration. As we shall see, the organization of arbitration actually differed in many respects from the regular and special courts established by the

<sup>137</sup> Ujlaki, I.: *Döntőbizottsági szervezet és eljárás* (Organization and procedure of arbitration committees), Budapest, 1964, p. 48.



Constitution of 1936. Undoubtedly it was just in the field of arbitration that modernizations were introduced which served the protection of the interests of socialist economic organizations more efficiently than the traditional procedural rules. It must be mentioned, too, that no judicial independence was granted to the arbitrators because the right of superior administrative organs to instruct the courts of arbitration was to be preserved.

In my opinion, the provisions of the Constitution of 1936 and the Act on the judiciary of 1938 which defined the spheres of the judicial organization in the aforesaid narrow manner and extended the monopoly of judicature only to this, were not up-to-date in respect of constitutionality. If we only take into account the fact that certain matters, which in 1936 and afterwards were matters of the administration of justice (because they belonged to the jurisdiction of the constitutional organs of judiciary), could be remitted to the "state-administrative" sphere of authority without changing the constitution, the inadequate description of this model becomes conspicuous at once. If we cast a retrospective glance upon the practice of framing the constitution and that of building the state that was adapted to the centralized methods of economic management based on the breaking down of plans, we see that here the system of central administrative instructions, the so-called operative control automatism of the state penetrated even the basis of judicature. The Constitution of 1936 contained a system of guarantees for the administration of justice; only this was not extended to the entire judiciary. And, where these guarantees were missing, the instructional "expediency" method of the administrative hierarchy replaced them. So all one may say is this: the larger the sphere of matters grew in which jurisdiction was not given to the organs of the administration of justice enumerated in the constitution, the more the actual influence of the guarantee system decreased in this field, and the method of instructions alleging expediency grew accordingly.

The problem of correlation between the jurisdictional monopoly and constitutional practice was hitherto pointed out only as concerns the Constitution of the Soviet Union and arbitration. Though, on the one hand, it affects also other organs in the USSR, and, on the other hand, the problem arises in other socialist countries as well.

Two more constitutions maintained the model of courts of the 1936 constitution: Article 63 of the Mongolian Constitution of 1960 defined the organization of the administration of justice as follows: "Justice is administered in the Mongolian People's Republic pursuant to the law by the Supreme Court of the Republic, by the courts of *aimaks* and towns, by special courts, and by the district (regional) people's courts." This latter differs from the high courts only in that it is elected directly by the

voters for 2 years (high courts are elected by the representative bodies of the respective level, for 3 years). The organizational and jurisdictional system shaped by the amended Rumanian Constitution is more rigid: Article 94 declares that "in the Socialist Republic of Rumania the law is administered by the Supreme Court, regional courts, people's courts and by the military courts." According to Article 96, "the courts try civil, penal and any other cases in their competence." This constitutional regulation reduces the possibility of incorporating any judicial organs as "special courts" in the system of the administration of justice, and creates a difficult situation for tribunals of arbitration and other organs by enumerating the competences of the courts. Act 59 of 1968, as amended in 1973, contains provisions on judging committees of social nature which operate in enterprises, economic organizations, institutions, co-operative and other social organizations, and in the executive committees of people's councils of non-regional nature.

Several new constitutions departed from the former pattern. The Czechoslovak Constitution has to be mentioned first of all. In this respect Article 98 of the Constitution of 1960 contained similar formulation to the earlier ones. According to this, judicature is performed by elected and independent courts. The Constitution—as amended in 1969—enumerates the courts as follows: the Supreme Court of the Czechoslovak Socialist Republic, the Supreme Court of the Czech, the Supreme Court of the Slovak Socialist Republic, the regional courts and the district courts. The difference between the four degrees is that the judges of the Supreme Court of the CSR are elected by the Federal Assembly (half of them from among the citizens of the Czech, half of them from those of the Slovak Socialist Republic), the members of the supreme courts of the republics and the professional judges of the regional and districts courts are elected by the respective national councils. The lay assessors for the regional and district courts are elected by the respective national committees (professional judges are elected for 10, lay assessors for 4 years). But the constitutional system of the courts does not end here because Article 98 of the Constitution mentions also military courts. It seems that despite a detailed enumeration, the Czechoslovak Constitution makes no mention of arbitration.

The other Constitution interpreting the administration of justice in the broadest sense is the Yugoslav Federal Constitution of 1974. Chapter 5 categorizes the courts as regular courts and as courts of self-management. According to Articles 221 and 222, regular courts have jurisdiction in civil, criminal, administrative and labour law cases. Self-management courts shall be established as the courts of associated labour, arbitration tribunals, conciliation councils, select arbitration courts and other kinds of self-management courts (Article 225). Finally, the Constitution enumer-

ates among the federal organs the Federal Court elected by the *skupština* of the Socialist Federal Republic of Yugoslavia, and the Constitution Court of Yugoslavia. The members of this are elected by the *skupština* of the Socialist Federal Republic of Yugoslavia, namely 2 members each of the Federal Republics and 1 each of the Autonomous Regions. Thus the Federal Constitution gives a detailed enumeration of the organ of the administration of justice, but does not regulate the specialization of the regular courts.

According to Article 92 of the Constitution of the GDR, justice is administered by the following organs: the Supreme Court, the district courts, the regional courts, the social tribunals and—in military matters—the Supreme Court, the military high courts and the military courts. The constitution emphasizes the role of the Supreme Court for which Paragraph /2/ of Article 93 ensures the leading position in the administration of justice. The judges, the assessors and the members of the social tribunals are elected by bodies of popular representation or by the citizens directly and are independent in passing judgment. It seems that the Constitution delimits the scope of jurisdiction with the enumeration of the courts (district courts, regional courts and social tribunals) in Article 92. It is interesting to note at the same time that a law decree of 1963 on the basic tasks and working methods of juridical organs (*Organe der Rechtspflege*) regulates the position of two special organs: of the conciliation commission (*Konfliktskommission*) and of the arbitration commission (*Schiedskommission*). These are, however, actually only social tribunals: the conciliation commissions make decisions in minor criminal cases and settle minor civil legal disputes at state enterprises, enterprises of similar legal status, at health, cultural and adult-educational institutions, and at organs of state administration; while the arbitration committees are set up for similar cases in villages and towns, agricultural production co-operatives, artisans', horticultural and fishing co-operatives. (However, the law on judicial organization, passed two weeks later, treated neither the conciliation, nor the arbitration committees.)

The Constitution of the GDR incorporated the social courts in the judicature on the constitutional level. According to the earlier definition of jurisdiction, these proceeded in smaller cases of criminal, as well as of civil law. This means clearing the way for drawing in the popular organs into the administration of justice.

The Hungarian Constitution as amended in 1972 says hardly anything of the alterations in the Hungarian system of the administration of justice. It only declares briefly that also special courts may be established by law in addition to the Supreme Court, the county courts and district courts. The constitutional regulation does not reflect the profound changes that took place in the Hungarian judicial organization in recent years. Follow-

ing the abolition of the economic management system based on a specified breakdown of the national plan, the former economic arbitration committees—as economic judicial organs—were incorporated in the regular administration of justice; also judiciary of labour became part of this system on the level of the Supreme Court. The unity of the ordinary administration of justice appears from the fact that, according to Act IV of 1972, the collegia of the Supreme Court are the following: criminal, civil, economic, labour and military collegia. Civil, criminal and economic collegia work in the county courts, and special county courts of labour were established on the county level. The district courts proceed in civil and criminal cases. We must note that labour arbitration committees proceed in labour disputes in the first instance in enterprises, and—pursuant to the Labour Code—they must be regarded as organs of the administration of justice in the broader sense having a different organization and function.

Why is it important for the purpose of our study to see whether a specialized, but homogeneous judicial organization is established on the constitutional level? If this problem involved only consequences of systematization, I would not think it necessary to raise it at all. But the consequences that can be drawn from the history of the socialist state organizations throw light upon very practical aspects of this question. If a homogeneous framework is given to an organization by a constitution or code, the result usually is that the divisions within this organization proceed according to uniform rules, and, at the same time, unify the pertinent systems of guarantee.

It would be of no use to project present-day constitutional solutions to earlier periods, for it is evident that *all* the branches of state organization work under different conditions of organization and guarantee in other historical and power relations. As I have said, the principle of judicial independence was not even present in the first years of Soviet power. Neither were the established forms of legal protection and their procedural guarantees practised. All this was justified because the new organs of jurisdiction had to be freed from all constraints that might have jeopardized the speed and efficiency of their activities. Obviously, this might have been often contrary to the interests of the individual citizen—exactly in order to protect the class-interests of the time. Based on the rather significant resolution of the 8th Party Congress, the following judicial principles can be pointed out (though I know that such far-reaching conclusions cannot be drawn from that): the *inclusion of* proletarian and poor-peasant *masses* in judicature (lay jurisdiction); the *abolition of* the judicial *multi-instance system* (uniform people's tribunal); the enforcement of the will of the proletariat; the administration of justice based on the *socialist sense of justice*; altering the *nature of*

*punishment* for asserting the educative tendency. These "basic principles" are the results and means of a given phase of class struggle.

As, however, socialist development raises different requirements, it is only natural that not only suffrage becomes democratic, by the cessation of the majority of restrictions, but that considerable modifications take place in all the organizations of the state. And it is exactly the constitution that sums up all this on the level of principles. Historical conditions made it possible that the Soviet Constitution of 1936 reflected some of these legal developments. It contained the following principles: participation of *lay assessors* (Article 103); *election* of courts (Articles 103–109); *free use of one's language* (Article 110); the *right to public trial and defence* (Article 111); the *independence of the judges* (Article 112). The introduction of these principles on the constitutional level was beyond doubt of historic importance and it is only today that their effect can be truly appreciated.

Yet Article 102 described rather strictly the organs of the administration of justice to which these principles apply. This is not to say that none of these principles were valid for other organs as well, but the *totality of these principles* applied only to the ordinary courts enumerated, and to certain special courts established by the Supreme Soviet. As a rule, other organs were not elected and not independent. Similar forms could incidentally emerge on lower levels, but not with the intensity referred to by the constitution. This historical experience relates practically to courts in all socialist states, not only to the Soviet courts.

As regards our subject, theory deals with two important principles: the independence of the judiciary, and the democratic guarantee system of procedure. The latter can be divided into three parts: guaranteeing the adversary procedure, legal remedy, and trial with the participation of people's assessors. Recent socialist constitutions lay down these principles almost without exception, but only for the courts and organs of the administration of justice operating on the constitutional basis (i.e. included in the constitutional model).

Legal literature of jurisprudence usually presents the *independence of the judge* as a most typical feature of the judiciary. As we have seen, this was not guaranteed—because of understandable class interests—up to a certain phase in the development of socialist judiciary. (For that matter, the institution of this independence was not self-evident even in the way of thinking of the revolutionary bourgeoisie, since at that time the election and the independence of the judges were not at all regarded as reconcilable principles.)

Historically, the independence of the judiciary originates in the judge's *exclusive subjection to the law*. This, on the other hand renders it self-evident that the judge is *not impartial*, at least as far as the will of the

given ruling class manifests itself in the law. Let alone the fact that, within this scope, the judge employs *his own value judgment*, and there is also room for this in the category of "independence", as has been written by an outstanding Austrian constitutional jurist.<sup>138</sup>

It should be added here that the formal guarantees which have been introduced in capitalist states for protecting the independence of the judiciary are of limited effect. Radbruch, for example, says about some of these guarantees—such as appointment for life, secure salary, prohibition of discharge and transfer—that these protect the judge from the fear of being brought to heel, but "for not being influenced by the hope of a fine career and advancement, there exist no statutory, only moral guarantees."<sup>139</sup>

The socialist contents of independence are summed up by Hungarian legal science as follows: (a) judges are subject only to the law, (including norms issued legally by state administration); (b) they are free from all external influence during judicial proceedings and when passing judicial decisions; (c) state or other organs, official or private persons cannot give them instructions in concrete cases.<sup>140</sup> The immunity of the judge (Article 14, sections /2/-/3/ of Act IV of 1972), and the disciplinary procedure regulated differently from that of other civil servants (Articles 63-67 of Act IV of 1972) are enumerated as guarantees. As a result of immunity, professional judges, and lay assessors—the latter because of an act connected with their participation in the administration of justice—may be called to account under criminal law only with the approval of the Presidential Council of the People's Republic upon the motion of the Procurator-General. The rules of incompatibility prohibit—in order to preserve their independence—judges from pursuing other gainful occupation, with the exception of scientific, artistic, literary and educational work. This is completed by the exclusion of judges in case of bias (Article 35 of Act I of 1973). A disciplinary resolution may be passed against a judge only by a disciplinary tribunal made up of judges, but such resolution may not contain a decision of dismissal, the tribunal may only move that the judge be recalled (Article 64 /1/ and Article 66 /1/ of Act IV of 1972).

The Hungarian Constitution contains no prohibition of transfer and removal of judges; moreover, it introduced the institution of revocation. This construction follows clearly from the socialist standpoint of *democratic control over the courts* which does not permit their withdrawal

<sup>138</sup>Walter, R.: "Die Bedeutung der richterlichen Unabhängigkeit," *Österreichische Juristenzeitung*, 1965, Nos 11-12, p. 4.

<sup>139</sup>Radbruch, G.: *Einführung in die Rechtswissenschaft*, Stuttgart, 1958, p. 153.

<sup>140</sup>Névai, L.: *Magyar törvénykezési szervezeti jog* (Hungarian juridical organizational law). Budapest, 1961, p. 90.

from the sovereign people's control. The foregoing guarantees of independence are held to be fundamental. These make it evident that the organization involved is one of the judiciary that is able to administer justice, and apply the will expressed in law in an objective way.

Article 102 of the Czechoslovak Constitution of 1960 declares: "Judges shall be independent in the discharge of their office and shall be bound solely by the legal order of the socialist State. They shall be in duty bound to act in accordance with the laws and other legal regulations and to interpret them in the spirit of socialist legality." Hence this article sees the limits to the judges' independence not only in the laws and statutes, but also in their express socialist sense of justice in the course of the interpretation of the law. Item 5 of Article 101 contains provisions on the revocability of judges by the representative body electing them.

Article 219 of the Yugoslav Constitution of 1974 states the following: "Courts shall be independent in the performance of their judicial functions and shall administer justice in accordance with the Constitution, statute, and self-management enactments." Article 231 adds that "no one who takes part in the administration of justice may be called to account for an opinion given in the process of judicial decision-making nor may he be detained in proceedings instituted because of a criminal offense he has committed in the performance of his judicial duties, without the approval of the competent assembly of the socio-political community." Thus, according to the Yugoslav regulation, the compass of the judge's independence is given by the constitution, the laws, and the self-administrative general acts; the judge enjoys immunity.

Apart from a minor difference, the Rumanian Constitution uses the text of the 1936 Soviet Constitution: "In their judicial activity the judges and the people's jurors are independent and only subject to the law." According to Article 108, judges and assessors are elected with the procedure ordered by the law. Paragraph /3/ of Article 1 of the Judiciary Act of 1963 states that the independence of the judiciary "rests on the close relations with the people, and this is guaranteed by the democratic system of directing and supervising the administration of justice."

The independence of judges is formulated in a similarly general and brief way in Article 155 of the new Soviet Constitution.

The other group of safeguards is to be found in the procedural system. The socialist countries have developed procedural rules for the judicial organs which contain guarantees for protecting the parties from any infringement of their lawful rights. An important guarantee of this kind is the adversary principle of the procedure, i.e. the parties' right to enumerate their arguments against statements made in the proceedings. This procedural guarantee is usually laid down on the constitutional level with express reference to the rights due to the citizens on this basis (e.g.

the right to use one's mother tongue). Articles 157 and 158 of the 1977 Soviet Constitution state the publicity of trial and the right of the accused to defence. Similarly, Article 49 of the Hungarian Constitution ensures the publicity of the trial and in Paragraph /2/ states: "Persons against whom criminal proceedings have been instituted are entitled in all stages of proceedings to the right of defence." Naturally, much more is provided for on the level of state law. The Hungarian Code of Civil Procedure (Act III of 1952) provides for ensuring the prevalence of justice by ordering that "courts . . . shall see *ex officio* that the parties exercise their rights properly in the lawsuit . . ." (Paragraph /1/ of Article 3), and that "in addition to the members of the court, parties and their representatives may put questions to the parties and other persons heard by the presiding judge . . ." (Paragraph /1/ of Article 133).

The Czechoslovak Constitution provides in Article 103: "The courts shall proceed so that the true facts of the case shall be determined and shall base their judgments on these findings. All court proceedings shall in principle be oral and public . . ." and "the right to defence shall be given to the accused". Article 180 of the Yugoslav federal constitution makes a different approach to this question: "Every person shall be entitled to equal protection of his rights in proceedings before a court of law . . . Legal aid shall be provided through the Bar as an independent social service as well as through other forms of legal assistance." Criminal proceedings are dealt with in Article 182. ("The accused shall be entitled to counsel . . .") Article 102 of the GDR Constitution formulates the adversary principle of procedure extensively: "Every citizen has the right to be heard in court" and "The right to defence is guaranteed throughout the whole course of the criminal procedure."

The second procedural principle is the possibility of *legal remedy*. This, however, is usually laid down not in the constitution, but on the level of the Acts of Parliament. Article 180 of the Yugoslav Constitution is an exception to this rule because the right to appeal is declared here not only for the administration of justice, but for other organs as well: "Everyone shall be guaranteed the right of appeal or other legal remedy against decisions of courts of law, state agencies, and other bodies and organizations which make decisions concerning his rights or interests founded on statute." Article 35 of the Rumanian Constitution declares that "those harmed in a right of theirs by an illegal act of a state body can ask the competent bodies, in the conditions provided by the law, to annul the act and repair the damage." (The implementation of this provision is served, among others, by Act 1 of 1967 on the judicial contestation of unlawful administrative acts.) Paragraph /2/ of Article 58 of the new Soviet Constitution declares that "actions by officials that contravene the law or exceed their powers, and infringe the rights of citizens, may be appealed



against in a court in the manner prescribed by law." Later on, this Article also mentions the right to compensation. Other constitutions give expression to this principle only in the right to defence, and leave details to be regulated by procedural statutes, by codes of procedure.

The principle of *collective judicature* (including the assessors' system) also belongs to the procedural system of guarantees. Article 152 of the Soviet Constitution of 1977 mentions only the second group of questions: "All courts in the USSR shall be formed on the principle of the electiveness of judges and people's assessors." Article 46 of the Hungarian Constitution declares that—apart from exceptions stated by the law—courts pass judgment in divisions made up of professional judges and people's assessors. Article 49 of the Polish Constitution provides for the participation of people's assessors in the investigation of cases and in passing judgment. Article 100 of the amended Czechoslovak Constitution contains a more modern solution: "In the course of court procedure, decisions are passed by a court board or single judge. The laws on judicial procedure define the types of boards and procedure in which people's assessors and in which judges ordinary take part in the passing of decisions; only professional judges may act as judges ordinary. Professional judges and people's assessors enjoy equal rights in passing decisions." According to Articles 228 and 229 of the Yugoslav Constitution, "courts shall sit in panels" and "justice shall be administered by judges and by working people and citizens voting as judges, lay-assessors, or jurors in a way determined by statute or by the act establishing the court concerned." According to Article 107 of the Rumanian Constitution, "lawsuits are tried in the first instance by courts, by county courts of justice, by military courts of justice with the participation of lay assessors, except for cases otherwise provided by law".

And here we come back to our original problem. All what has been discussed so far—guarantees and other safeguards enwrapped in procedural forms—are closely connected in most socialist countries with the organization defined as organs of the administration of justice in the constitutions. The fact that a certain judicial organ not mentioned in the constitution as such has been granted certain guarantees (specific features of the independence of the judiciary, certain forms of the legal remedy system, adversary procedure), only shows that the legislator was aware of the modernity and importance of these safeguards and procedural forms. This is by no means an obligatory system if the institution in question was not included in the organization of the administration of justice taken in the stricter sense. (Safeguards of *constitutional* and *statutory* consequence were declared only for those belonging to the said organization.) These safeguards render this organization up-to-date: equipped in this way, it is able to perform the tasks and functions falling on it as a result of the

division of labour in state activities. For the purpose of our discussion and a modern socialist state organization, it is not at all indifferent on which level the modern institutions are fixed: whether a simple, "medium-degree" order gives birth to them—in this case they are easily exposed to modification—or it is possible to stabilize these safeguards on the constitutional level of that of the Acts of Parliament.

Later on, I shall show that I regard the specialization of the administration of justice as a concomitant of development. There is no purpose of reducing the specialized courts formed in the last decade to the judicial pattern of early liberalism. Today, there is no reason whatsoever for doing so, and there will not be any in the future either. The present situation seems to be confused by an obsolete and unnecessarily voiced principle. This principle which the bourgeoisie used against the despotism of feudalism is the following: "Administration of justice exclusively through courts". The feudal monarchy actually rejected the activity of public courts (or did not even introduce it) to serve its own purposes. The French *lettre de cachet* system and the English Star Chamber prevented by their very existence the working of courts and parliaments as these latter proceeded on the basis of "controlled" or at least public and generally known procedural forms. The slogan "Administration of justice exclusively through courts" was related to these abuses. The bourgeoisie wanted to prevent the monarchy from retaliating political actions through secret tribunals or without tribunals. This principle must certainly be regarded as progressive at that time. The state structure of feudalism was being undermined also by this. We may say that possible provisions on the constitutional level which prohibit the activity of the organs of the administration of justice which have not been established on the constitutional or statutory level are rational even today (although, considering the nature of the problem, there is little practical reason for this). Paragraph /2/ of Article 101 of the GDR Constitution indicates this by stating that "Special courts are inadmissible." This is an express prohibitory provision. However, the aforesaid system of the monopoly of judicature, where the organs of the administration of justice are excluded from this organization, is another question, and, as a result, a strange situation emerges.

In his textbook *Hungarian Constitutional Law*, János Beér wrote in connection with this principle: "Paragraph /1/ of Article 36 of the Constitution and Paragraph /1/ of Article 1 of Act II of 1954 state in concert that in our socialist state justice may be administered only by the judicial organs set up for this purpose. This is so because the organizational pattern of the judicature, the means available to the judges, the safeguards surrounding their activity, and the procedural rules ensure the accomplishment of judicial tasks through courts more successfully than through any other state organs. The progress of our state and the legal

system clearly shows that this principle is more and more fully prevailing. This may be concluded in spite of the fact that certain matters of similar nature belong to the tasks of other state organs [ . . . ] This solution must be regarded as lasting, that is justified by the special features which characterize the substance of these matters."<sup>141</sup> It is impossible not to agree with one part of this train of thoughts, for it is certainly true that the organizational and procedural safeguards for the successful administration of justice are best ensured in the organization of the administration of justice.

But a totally different conclusion can—and, in my opinion, must—be drawn from these facts. If the organizational and procedural safeguard system of the organs, termed judicial in the constitutions, is the best and the most modern, efforts should be made to grant all these advantages or at least a part of them, to *every organ engaged in judicature*. (It is a well-known fact that such principles are not laid down in the constitutions with due exclusiveness. Article 46 of the Hungarian Constitution, for example, declares the participation of lay assessors in court panels. Yet the second sentence permits exceptions to this rule. The fact is that, today, the proportion of proceedings with the participation of lay assessors is lower in Hungarian judicature than the proportion of proceedings before judges ordinary or in panels made up of professional judges.)

As I have mentioned, the recent legislation of many socialist countries extended the safeguard system provided for courts, or some part of it, also to other organs engaged in the administration of justice and thereby brought them nearer to the courts. Just to mention a few examples, in Hungary the arbitration system was completely merged with the regular judicial organization in 1972, and the arbitrators have been granted all guarantees pertinent to judges. Important changes were introduced in the organization, procedure and guarantees of labour arbitration committees established by the new Hungarian Code of Labour. For example: the managers of enterprises now have less influence in setting up the labour arbitration committee than under the former Code; the chairman and the two deputy chairmen of the committee are appointed by the president of the respective county labour court upon joint recommendation by the trade union and the enterprise, the members of the committee are appointed in equal proportion by the trade union and the enterprise. This system itself grants a certain independence to the members of such committees. If we take into account that the chairman, the deputy chairmen, the members and the substitute members of the labour arbitration committees "enjoy the protection ensured to trade union officials", that the preliminary approval of the president of the county

<sup>141</sup> Beér, J.—Kovács, I.—Szamel, L.: op. cit. p. 410.

labour court is required for dismissing the chairman and the deputy chairmen, and that the said president must be notified about their transfer in advance, it is quite clear that all these factors are aimed at granting independence to the labour arbitration committees. The same need was felt for modernizing the procedure of the labour arbitration committees. Paragraph /2/ of Article 66 of the Labour Code declares the adversary nature of procedure: "The parties shall be given opportunity at the hearings to introduce evidence, to state their standpoints, and to have legal representation." According to Decree 9/1967 (October 8) of the ministry of labour, "the party and his authorized delegate may inspect the files, may make notes and copies thereof . . ." (Article 15).

If we say therefore that the administration of justice is, generally speaking the settling (judging) of individual legal disputes by independent judicial organs on the basis of law and in a procedure of adversary principle, then we must not draw negative consequences from this definition. I don't mean here that the compass of this organization—called judicial at present and supported by a system of safeguards—should be stiffened; quite on the contrary, it ought to be expanded. Namely if such organs as courts of arbitration, labour and other arbitration committees in certain socialist countries perform functions which are really important for the society, the individual citizen, institutions and other organs, and if the aforesaid procedural, organizational and other safeguards support the activity and efficiency of the administration of justice in a modern way, the logical conclusion to be drawn is that up-to-date forms of organization and operation must be ensured also for these organs. It is important therefore to point out the *common* features of these organs. Based on the principle of socialist legality, the settlement of legally disputed questions must take place through the co-operation of organs which are getting closer to an advanced judicial organization and to its safeguards, not only formally, but also in their contents.

The old administrative-directive method seems to be gradually replaced in the "side-branches" of the administration of justice by the well-proved and up-to-date organizational and procedural model of courts which has been modernized in certain respects by the methods of arbitration. However, in order to remove the hindering factors, it is absolutely necessary to abolish the obsolete principle of "administration of justice exclusively by courts", and to accept the view that the development of the jurisdictional organs must be continued in the sphere where the juridical function is really present. I am of the opinion that this is the first and fundamental problem of the new model of the socialist administration of justice.

## 2. The New Branches and Means of the Administration of Justice

A tendency seen all over the world, especially in our century, is that the formally "uniform" judicature is getting increasingly specialized and differentiated. In bourgeois countries this process resulted from modern, specialized industries, from increased trade turnover as well as from state intervention. *Special courts* were established, and their integration with the judiciary goes on continuously (though theory can hardly cope with the problem of the courts and their position). In the USA, the organization of special courts reached the level of the Supreme Court: special federal courts were instituted for fiscal matters, customs, patent matters. In the German Federal Republic, 7 major branches of special jurisdiction have been established since 1950, in addition to, or co-ordinated with, regular courts: social courts, commercial courts, administrative courts, financial courts, labour courts, the constitution court and the court of arbitration. It would be difficult to sum up the reasons briefly. Apart from the various direct political aims of the bourgeoisie—among which we may mention that some of its groups may exert an influence on recently specialized courts—it is evident that the improvement of the judges' expertise is an objective necessity which arises from the variety of social tasks. If we scrutinize thoroughly the forms of specialization, we find a differentiation which supports our stand as regards its main causes.

The socialist administration of justice could not withdraw from the effect and consequences of specialization. Former civil (private) or criminal law cases got specialized treatment in practical life even under socialist circumstances where the relations of society and state changed radically and where certain legal disputes differ naturally from those of the former capitalist circumstances. This happened for example, in the case of labour law, or civil law disputes between socialist organizations.

But differentiation resulting from specialization is only one of the reasons for the complexity of the organization of the administration of justice. For, whenever the socialist state made an attempt at drawing the population into the various branches of the administration of justice, this inevitably led to new forms of judicature. Thus, the differentiation of judicial branches is not only the result of specialization in a narrow sense, but the new targets of legal policy had also similar effects. (The Council of People's Commissars in the RSFSR established the workers' courts as early as November 1919 in order to combat wasting and protect the increase of production. The comrades' (social) courts of factories, administrative organs and the like were established in 1931 by a common resolution of the Central Committee of the Russian Communist Party (of Bolsheviks) and the council of the People's Commissars of the RSFSR.

45,000 such courts were still active in 1938, but with decreasing intensity.) The setting of new political aims was coupled with an intensive specialization and differentiation in the organization of the administration of justice. This process is of course only characteristic of the socialist states. The case is different with what is called select arbitration: while this institution is well known in capitalist countries, in socialist countries it has been applied for a long time only in the field of international trade. In recent years, however, it has been used in other fields of civil law in several socialist countries, based on the constitution or other laws (e.g. in Yugoslavia and Hungary).

To sum up the matter, it may be stated that the differentiation of the administration of justice took place in two ways: (a) as a result of an increasing specialization of tasks that permitted a clear delimitation of overlapping spheres of jurisdiction and (b) as a result of setting new objectives of legal policy and, especially, of drawing the population into the work of the administration of justice. These two processes of differentiation cannot be separated sharply from each other. Specialization often resulted in new methods, e.g. the introduction of labour law jurisdiction with an increasing emphasis of the popular element in this sector. Both points of view must therefore be taken into consideration.

So far I have spoken only in general of the new branches of the administration of justice under socialist circumstances. Before starting a detailed discussion I should like to point out once more that we leave the compass of the constitutional model in most cases. In the foregoing I have emphasized the problems which follow from the principle of "administration of justice exclusively through courts" and have tried to compare the constitutions, the complementary laws, and the reality of the administration of justice from the organizational point of view, and this probably indicates that the new judicial branches seldom or not at all are to be found on the level of constitutional regulation. But, in this special case, I disregard my self-imposed requirement to study state-organizational problems only on the constitutional level since here and in some other cases a constitutional regulation of new fields would be necessary. On the other hand, I have mentioned that a few new socialist constitutions have stepped out of the old magic circle, and a number of new institutions and organs were incorporated in them. So, examples can already be found, which show how the constitutional models can be extended in this direction. Before discussing these problems, however, we must speak of the present position of existing organs which perform functions which are more or less those of the administration of justice. For this purpose the following organs have to be considered: the economic arbitration committees (arbitration courts, arbitration committees, economic courts), the labour arbitration committees (courts of labour), the social courts

(comrades' courts), infraction committees of petty offences, and other arbitration tribunals.

I have referred to be beginnings of *arbitration* before, and have given a brief outline of the early stages of Soviet development. Similar judicial organs of various names were established in the people's democracies after World War II along with the introduction of planned economy. Bulgaria, Poland, Rumania and Hungary were among the first to set up such organs in 1949 (there were attempts in Hungary in 1948), and the foundations of arbitration were laid down in Czechoslovakia in 1950, and in the GDR in 1951. (The institution of arbitration was established in Cuba by an Act of Parliament in 1962. A national arbitration committee, and sectoral arbitration committees were set up, the latter in every ministry and at central organs. The resolutions of arbitration committees cannot be contested for the purpose of legal remedy.<sup>142</sup>)

Needless to say, if the arbitration concerns legal disputes connected with the national economic plan then the jurisdiction as well as civil-law and administrative methods are determined by the methodology of planning. If a highly centralized management, the so-called "plan breaking-down pattern" is involved, the means, forms and procedural system of arbitration resemble those of administrative organs. If, on the other hand, the decentralization of planning reaches a certain extent, and the important role of the market is recognized, the features of civil law become inevitably dominant also in arbitration. Therefore, the determining element in economic judicature and arbitration is the method of planning. This, however, does not influence directly arbitral activities, it influences the statutory provisions which determine the system of arbitration, prescribe new rights and obligations, new spheres of authority, and the observance of different legal principles in this field. It may also happen, that the system of arbitration changes first from inside, as a result of the changing economic conditions and views, and the pertinent provision of law is then framed on the basis of such generalized experience. (This was the case in Hungary before the new act on the judiciary was passed when, following the introduction of the new economic mechanism, the ministries did not exercise their right of instruction in the case of contracts. The basis of legal regulation in one way or another is always the methodics of economic planning; therefore, considerable differences may exist among the arbitration methods in the various socialist countries. Several regulations, statutes were issued for economic arbitration committees just as a result of recent economic reforms.

The rules approved by the federal State Court of Arbitration—to which the Union Republics gave their consent—came into force in the

<sup>142</sup>Ujlaki, I.: op. cit. pp. 63–64.

Soviet Union in 1963. (The State Court of Arbitration is subordinate to the Soviet council of Ministers.) These rules introduced a uniform procedure for dealing with controversies concerning the national economy. The most important provision is that the state courts of arbitration have to observe the laws and other legal norms when settling the disputes. Thus, the basis of arbitration is legality and not individual orders. The session of the court is headed by the state arbitrator whose duty is to establish the rights and obligations of the parties, the circumstances of the dispute and the causes of its origin. The rulings of the court are final and may be revised, upon a motion of the enterprise, organization or institution concerned, or upon the initiative of the supreme arbitrator, only if they are not in accord with the law and with the circumstances of the case. Arbitration bodies are under the obligation of signaling deficiencies in the activities of the enterprise, institution, etc. if such are discovered during the proceedings. The federal State Court of Arbitration has the right to issue instructive orders. The place of arbitration is decisively influenced by the new Soviet Constitution which discusses arbitration bodies and the courts in the same chapter. The Constitution declares that arbitration settles economic disputes among enterprises, institutions and organizations. A detailed regulation is provided in the law on State Arbitration.

In Czechoslovakia, Act 121 of 1962 established the Economic Court of Arbitration. The tasks of this organization consist in hearing and settling economic disputes between socialist organizations, promoting their co-operation, influencing the fulfilment of plan targets, signalization, collecting and generalizing experience. The organization is divided into several sections. The chief arbitrator is appointed by the government, his deputies, the other arbitrators, the consultants and other workers are appointed by the chief arbitrator. It is characteristic of guarantee features of arbitral procedure that Paragraph /1/ of Article 30 of the said Act declares: "The arbitrator hears the economic dispute together with the representatives of the organizations involved in the dispute, and has to conduct the hearing so that the dispute is clarified by mutual agreement which is in accord with overall social interests." Thus the principle of the adversary procedure is valid also here. Cases are heard by a panel if the head of the arbitration court orders the dispute to be heard by a three or five member committee. For strengthening *democratic principles*, Article 32 of the Act permits the interesting possibility of economic disputes to be heard and settled by an *elected judge* who is elected by the parties concerned. Thus the institution of elected judges is regarded by the Act as a means of democratization in this branch of the administration of justice. The legal remedy system in the Czechoslovak economic arbitration conforms to the earlier socialist practice of arbitration. The decisions of



the professional or co-operative arbitration courts may be revised by the head of the court, his decision by the minister concerned, or—depending on the case—by the president of the federation of co-operatives. Thus the line of the administrative subordination is manifest in this respect, although otherwise the Act mentions no rights of giving administrative instructions.

A decree was issued on April 18, 1963, in the GDR on state courts of arbitration (or, more exactly, on state courts of contracts, *Staatliches Vertragsgericht*). This organization of arbitration operates subordinate to the Council of Ministers. German authors point out the particular feature of this decree according to which “the most important duty of the court is to observe, evaluate and generalize the symptoms in the course of its activity, and to make suggestions to the council of ministers for the purpose of necessary changes” (Paragraph /2/ of Article 1).<sup>143</sup> The other characteristic of the decree was that it expanded the sphere of authority of arbitration courts considerably compared to the former situation. According to Articles 14–16 of the decree, disputed cases outside plan contracts—which till then were tried by regular courts—were placed under the exclusive jurisdiction of the state courts of arbitration. The tendency was, therefore, to extend the activity of arbitration courts. And the reason for this was to ensure the unity of the administration of justice in the economic field.

The decree vested the president of the arbitration court with the right to revise any erroneous decision. The president of the Council of Ministers may *order* the president of the State Court of Arbitration to institute a procedure of revision. Other members of the Council of Ministers, ministers, under-secretaries of state, heads of central social organs are entitled under the law to request—within three months from serving the decision to the parties—the institution of revision of procedure, provided that the institutions, factories, etc. affected by the decision are under their supervision. Higher and superior organs have the possibility of protesting against the decision at the regional court of arbitration, within two weeks from serving the decision (Article 50).

It has to be mentioned that supervision over the central organ of the Polish arbitration organization is exercised by the minister of finance.

Rather different organizational patterns emerged in connection with arbitration in the socialist countries in recent years. Similar tendencies are seen also in other specialized organs of the administration of justice. The first and most important of them is that the jurisdiction of these organs was *extended* everywhere, showing that these organs are not short-lived,

<sup>143</sup> Klinger, G.: On the New Decree Regulating the Tasks and Working Methods of the State Arbitration Court of the GDR, *Kul földi Jogi Cikkgyűjtemény*, Vol. IV, 1964, p. 136.

and proved well in practice first and foremost because of the judges' specialization, expertise and practice in economics. The disputes tried by these courts require higher economic expertise, that is, a highly esteemed feature of their judges. We may anyway draw the general conclusion that, similarly to the specialization of courts going on all over the world, this process is also not an accidental one in the socialist countries; moreover, it is reasonable to develop and promote it.

The various trends in economic arbitration in the socialist countries raise a different problem. Setting aside subjective factors which emerged in legislation inevitably, we may say that the reasons for this are to be found in the particularities of economic development of the given countries. The fact that, even in the past years, practically all variants—ranging from arbitration courts under the administrative control of the state to economic courts vested with all the judicial safeguards—are to be found in legislative regulation indicates that considerable differences exist in the economic systems of these countries. No matter from what angle one looks at the question, one cannot avoid detecting—together with the new tendencies of economic control—the objective regular trends of developing the system of economic courts and arbitration in practically every European socialist country. These may be summed up as a twofold tendency: (a) *approaching* the structure and procedure of these organs to those of the courts, and the gradual granting of most of the guarantees of the administration of justice in this way, (b) maintaining the *rational working methods* and *procedural simplifications* in this field which result from specialization, and extending the well-proved ones to the ordinary, general courts in certain cases. Experience shows that it would be desirable to place this branch of the administration of justice on a constitutional basis, if only because in this case the procedural and organizational safeguards of the judiciary would “automatically” apply to them. And there would be no obstacle whatsoever to fixing them in many socialist countries, since they already operate in practice. If, on the other hand, in certain countries arbitration is regarded as nothing else but one of the means of economic control, it will include no “judicial” traits.

While the system of arbitration, as we have seen, was reduced to a less important position in the regulation of the administration of justice, it is interesting to see that a different situation arose in the case of social tribunals of various names. In a number of socialist countries where constitutions were framed recently, these organs were so to say, incorporated in them. But this incorporation took place in various ways. There are constitutions which enumerate these organs among the constitutional bodies of the administration of justice, but otherwise let them retain their organizational separation, the different features of the procedure. But there are also countries where the courts of social nature were fully

included—temporarily at least—in the constitutional organization of the administration of justice, which means that these courts became basic organs of the administration of justice with clearly defined competences and jurisdiction. Lastly there are socialist countries in which these organs were not included in the constitution; still, considering their sphere of operation, we may say that their importance did not decrease recently, even if there were disputes going on about their necessity, the lawfulness and expediency of their activities. These disputes arose especially from the circumstance that there had been difficulties in the activity of such social courts in almost every socialist country.

The idea of social judicature undoubtedly became prominent especially at the time when the system of socialist self-government was emphasized in the European socialist countries, when the means and ways of the emergence of the all-popular state were disclosed from many aspects. The demand for the regulation of this important branch of “self-government” on the constitutional level, was particularly strong in that period. So it is worth-while to consider this period, these constitutions, which summed up the new position and requirements of social judicature on this basis.

The first of them to be mentioned is Article 101—in its original formulation—of the Czechoslovak Constitution of 1960. Accordingly, the working people was entitled to set up two kinds of local people’s tribunals for increasing its participation in the administration of justice: the regional and the local working-place people’s courts. It seems, however, that this model did not stand the test, because it was replaced by the new text of the constitution which does not mention the local people’s courts, and declares in a clear-cut manner in Article 100 that “the court of first instance is the district court as a rule” (paragraph 3).

The other constitution concerned with this question is that of the GDR (Article 92). It states: “The administration of justice in the GDR is exercised by the Supreme Court, by the regional courts, the district courts, and by the social courts within the framework of tasks assigned to them by law.” This means that the Constitution grouped, the social courts of various names and tasks with the regular judicial organization. An Act of 1968 on the social courts mentions two committees: the so-called conflict committees acting in industrial units, medical and cultural institutions, at state organs and institutes and social organizations, and the arbitration committees set up in the area of towns and villages and in various production co-operatives. The former operate under the guidance of the trade unions, the latter under the guidance of representative bodies. They proceed in labour disputes, in punishable cases referred to them, in cases of petty offences, violation of school duties, in cases of vagrancy, and in simple civil-law and other disputes. The members are elected by the

workers of the units concerned for two years, or by the inhabitants of the region or the members of the production co-operatives for four years.

The Yugoslav Constitution makes no mention of any organ of the administration of justice resembling the Hungarian social tribunals, but Article 225 enumerates a large number of courts to be set up with the co-operation of social forces: the courts of associated labour, arbitration tribunals, the conciliation councils, the select arbitration courts. These courts differ as to their nature, purpose, organization and powers from the courts of social nature in the other socialist countries. A more concrete formulation was given in an act of 1967 for the conciliation (settlement) councils which proceed on their own initiative or upon the request of any party in disputed cases arising between social organs and individual citizens. The procedure of the conciliation council is not binding on anyone. These councils are elected by the citizens at electoral meetings or in their working collectives. Procedure is verbal, simple, and free of charge.

From among all the socialist countries in which the social courts had emerged on an extra-constitutional basis, this organization has the greatest traditions in the Soviet Union. After the attempts in 1919 and 1931, the legislation committees of both chambers of the Supreme Soviet suggested the revival of the so-called comrades' courts in October 1959. The pertinent regulations were framed by the legislative bodies of the various republics. The Presidium of the Supreme Soviet of the RSFSR adopted the regulations in 1961, and amended and completed them in 1963. The Russian regulation, in force today, is the rule of procedure of comrades' courts as set down in 1977 by resolution No. 254 of the Presidium. The comrades' courts are operating in factories (institutions, etc.) including colleges and secondary schools, and in regions (housing estates, villages, village settlements). The comrades' courts are elected by the working population at meetings of institutions, collectives by open vote for two years. The meeting, which is convoked by the trade union committee, the kolkhoz management, or the executive committee of the local Soviet, determines the number of the court members. The members of these courts are under obligation to render account at least once a year and they can be recalled. The jurisdiction of the comrades' courts is most varied. They may proceed in questions connected with work discipline, with the observance of the socialist rules of co-existence, in minor lawsuits of property rights among citizens, in cases connected with the division of using a building and certain administrative petty offences. These courts may take the following measures: (a) obligation to apologize in public, (b) admonition by colleagues, (c) public reprimand, (d) public censure with or without press publication, or (e) fine up to 10 rubles, (f) suggestion to the head of the institution for transfer to a lower job with lower pay, (g)

recommendation to dismiss the employed person. The comrades' courts of factories and plants are directed by the trade union committee of the factory or plant, the regional comrades' courts by the executive committees of the respective Soviets.

Two different types of Rumanian social courts were developed for different purposes and acting in different fields. The social courts of enterprises are mainly concerned with questions of work discipline, including the causing of damage to social property, as well as insult and brawl at the work place (if the latter caused no injury). It is an interesting tendency of this model that relatively more serious acts come under the jurisdiction of this social court, and so it is this court that imposes the more severe sanctions; less serious acts come under the authority of the employer. Regional social courts were established in villages, towns and town districts, and their duty is conciliation. Two of their three permanent members are members of the local council, one is a teacher. Conciliation in the following cases comes within the sphere of their proceedings: violence, assault, threatening, insulting the memory of the dead, slander, trespassing, annihilation of landmarks, damaging things, crimes connected with tenancy. If conciliation is unsuccessful, the injured party may go to court.

In Hungary, social courts were established usually in enterprises where the number of employees was over one-hundred. Their jurisdiction extends mainly to cases connected with the violation of work discipline and the rules of socialist co-existence, minor criminal acts referred to them by the prosecutor or a court, cases of slander, libel, assault and certain financial disputes arising between the employees (Article 7 of Law Decree 24 of 1962 as amended by Law Decree 35 of 1971). These social courts may rule that the employee in question be admonished, censured, his profit share or bonus be withdrawn for a specified term. The tribunals may recommend to the manager that the employee should be transferred, dismissed, and may impose a fine up to 500 forints in case of a minor offence; they may oblige the employee to pay damages, may recommend to the public health authority to employ compulsory anti-alcoholic treatment, may order to pay a certain part of the wages to the family if the employee neglects maintenance. These social courts perform their activity under the guidance of the National Council of Trade Unions; their organization, the detailed rules of their procedure are determined by this Council. The social courts are elected by the employees for two years. The president and his deputy are elected by the members of the court from among themselves.

For ensuring the adversary procedure, the said Law Decree declares that the employees having an interest in the case must be heard. A social accuser and a social defender from among the employee's fellow-workers

may take part in the proceedings. Those considering the decision of the social court injurious, may lodge a complaint with the trade union committee within eight days. The trade union committee may (but is not obliged to) initiate the revision of the decision by the social court. This is completed by the party's right to submit a petition in important cases for revision to the proper district court which then reaches final decision. The members of social courts enjoy the same protection as the elected officials of the trade unions, and their protection under criminal law finds expression in that they are regarded as officials (Penal Code, Article 114).

Evidently, this branch of the administration of justice presents a rather varied picture. What we may regard as a general tendency is that their duty is the maintenance of production discipline, the protection of the rules of socialist co-existence; this means that they deal mostly with moral problems. Their sphere of authority, however, extends to two more fields: minor crimes and conciliation in certain civil cases. This operation at the dividing line between law and morals is typical of almost every social court. The other typical feature is the exclusiveness of lay jurisdiction, as a consequence of which no professional representation is permissible under many statutes and other rules, evidently with the aim to prevent the accusation and defence from shifting from the field of moral questions to possible legal formalism. A duality of territorial and enterprise social judicature has developed in most socialist countries, adding that those of the enterprises were more active in recent years. We may therefore say that one of the branches of lay judicature has taken roots in these countries, although regarding their details, with different features. And, due to their political importance, they are ahead of other new type organs of the administration of justice in that they have become a matter of constitutional regulation. This fact, to say the least, shows that there is a need for the constitutional regulation of organs of judicature other than general courts and that constitutions should not bar the operation of other organs, administering justice.

The system of labour courts belongs to the new organs of the administration of justice which have developed considerably in the socialist countries, but have nowhere been raised to the constitutional level. Actually, two forms of labour judicature have developed: the one of social character, and the administration of justice by professional judges appointed for this purpose.

The Czechoslovak Labour Code of 1965 assigned the decision of labour disputes to the authority of the trade unions. The Code did not define what trade union organs were entitled to proceed here, it left this regulation to the National Council of Trade Unions. The Council issued a resolution in the same year and entrusted the trade union committees of factories and enterprises with this task; these committees may subdelegate

this authority to workshop committees, or to labour arbitration committees. If the procedure of the arbitration committee is unsuccessful, or one of the parties disagrees with the arbitral decision, the labour dispute is brought before a regular court. Hence the model of labour judicature is this: lay judicature of social (trade union) nature, and the participation of courts, especially in revision.

The Hungarian system of labour arbitration committees regulated by the Code of Labour (Act II of 1967), and by the pertinent decrees on implementation—is connected with an administration of justice by the county courts of labour. Thus a mixed system of judicature was created here: lay judicature on the first instance, and professional-judicial on the second.

The system of the GDR differs from those described above in that the actual labour judicature organization is not of social nature. But, as I have mentioned, the conciliation committees established in 1961 not only correspond to the Hungarian social tribunals, but also proceed in labour disputes in specified cases. The district and regional labour courts are connected with the general judicial organization because the Supreme Court has a right of cassation and issues decisions of principle in connection with their rulings. The presidents and deputy presidents of the courts of labour are appointed by the president of the Labour and Wages Commission, the other judges and the assessors are elected according to a special regulation. Hence the scheme is changing here: the courts of first instance are the district labour courts, the courts of second instance are the regional labour courts, and this is connected with the cassation authority of the Supreme Court. The conciliation committees have exceptional and limited powers (their resolutions can be contested at the district labour committees).

It appears from labour judicature, too, that the connection of the judicature of social nature gets closer to the regular judicial organization. The inclusion of the social element in labour disputes in the socialist countries is connected on the other side with the requirement that the parties, employees and employer enterprises alike, be sure at the same time about the guarantees of legality; this resulted in the different solutions of the mixed system.

The activity performed in the socialist countries by the select arbitration courts belongs to the sphere of the administration of justice beyond doubt. But a constitutional regulation in this respect is found only in Article 225 of the Yugoslav Federal Constitution; the legal systems of other socialist countries sometimes recognize them as organs of the domestic administration of justice, sometimes accept them as an organ of the administration of justice only in the field of private international law. In Hungary, up to 1967, the procedure of select arbitration was available

only "if the contract concerning select arbitration relates to . . . a disputed case . . . which arose between a home state enterprise or organ and a foreign natural or legal person" (Article 17, Law Decree 22 of 1952). That is why László Réczei and István Szászy<sup>144</sup> wrote that in the socialist countries select arbitration "serves only the purpose of intensifying foreign trade relations, and cannot be used for settling other legal disputes". But it is evident that even in this case the board of arbitration would be part of the national judiciary, for what is involved here in fact is a simple transfer of the jurisdiction of regular or other organs of the administration of justice. (The Bulgarian code of civil procedure of 1952 makes boards of arbitration available to any party in the field of foreign trade in the case of international agreements departing thereby from the otherwise compulsory procedure by a foreign trade arbitration committee.)

The new Hungarian rules show in what manner the changes in the economic system affect the various branches of the state organization, including the administration of justice. Law Decree 40 of 1967, which amended the sections relating to select arbitration in the Code of Civil Procedure, opened up, in the spirit of the economic reform, freer forms of the administration of justice in the economic field. In addition to maintaining the possibility of the procedure before a board of select arbitration in disputed cases arising from a legal relation between a domestic enterprise and a foreign party, it extended this possibility in a new direction. Pursuant to item c/ of Paragraph /1/ of Article 360 of the Civil Procedure Code—provided that it is possible under the law, law decree or government decree—boards of arbitration are now available in cases of written contracts also in disputed cases arising from a legal relation *between domestic enterprises*. (According to the said Law Decree, a domestic enterprise can be a state organ, a state enterprise, a co-operative, and a co-operative enterprise.) A contract for employing a board of arbitration excludes any other procedure (by court, state arbitration committee, etc.). It is clear, therefore, that what was changed here is not the nature of the disputed legal case, but the acting judicial organ, on the basis of a statute. Does this not prove that we have already broken through the monopoly of judicature, the principle of "administration of justice exclusively through courts"? Paragraph /3/ of Article 361 of the new text of the Civil Procedure Code declares: "The effect of the decision of a board of arbitration (or that of conciliation) is the same as that of a court judgment with legal force." Thus the subject of procedure is the same as in regular courts, the effect of the decision is also the same, and,

<sup>144</sup>Réczei, L.: *Nemzetközi magánjog* (International private law) 2nd ed. Budapest, 1959, p. 357. and Szászy I.: *Nemzetközi polgári eljárásjog* (International civil procedural law), Budapest, 1963, p. 628.



what is more, in cases defined by the Law Decree a regular, judicial organ—the Budapest Municipal Court in this case—may annul the decision of a board of arbitration or the settlement approved by it.

The Law Decree puts the boards of select arbitration under obligation to hear the parties, to draw up a record of the trial, and to give reasons for their decision. Otherwise they determine their procedural rules themselves, within the compass of effective statutes.

Boards of select arbitration may request the otherwise competent district court to render assistance in taking evidence, and to use force if necessary for taking evidence by the board of select arbitration. The party (or the procurator) may—in specified cases—submit a petition for the invalidation of the decision within sixty days from the service thereof.

Select arbitration in economic cases was introduced in Czechoslovakia in 1963. According to Paragraph /1/ of Article 3 of the chief arbitrator's announcement, "an arbitrator may be elected for trying and deciding any disputed economic case otherwise coming under the jurisdiction of economic arbitration courts..." and the decision of the board of arbitration has the same effect as the court decision (Paragraph /3/ of Article 12). Arbitrators are elected for a definite case by the organs concerned.

The activity of the boards of arbitration is the characteristic field of the administration of justice in which considerable changes are to be expected in the socialist countries as a consequence of the modernization of economic management. Hungarian developments are typical in this respect. As a matter of fact, only the juridical practice of the coming years will show whether the economic organs make sufficient use of this procedure in their domestic relations. It is clear anyway that this practice breaks through the existing barriers of jurisdiction, and if practice supports it in the future, the need will emerge for a regulation so that it should not collide with constitutional norms (in this case, however, the rigidity of the constitution must be terminated).

Finally, I shall discuss the judicial organs dealing with petty offences, which are known in all the socialist countries. The separation of acts seriously dangerous to society (crimes) from less dangerous acts (infractions) took place fairly early, although the French *Code Pénal* grouped the concept of infractions in the sphere of criminal law, as was pointed out by Lorenz v. Stein.<sup>145</sup> Later European legislation supported police tribunals for infractions, mainly by authorizing to proceed not only expressly police organs, but other administrative organs as well. The separation of crimes from infractions (petty offences) took place inevitably also in the

<sup>145</sup>Stein, L.: *Handbuch der Verwaltungslehre*, I. Teil (III. Auflage), Stuttgart, J. G. Cotta, 1887, pp. 223–224.

socialist countries. The acts included in the sphere of infractions do not attack the foundations of the socialist state, the peaceful co-existence of people, social and private property. Although their effects must not be underestimated, they are usually nothing else but the citizen's lack of discipline which causes difficulties in the normal course of community life and progress. In a Hungarian textbook of administrative law, Lajos Szatmári calls infraction a special form of unlawfulness. The criteria are these: (a) a conduct, violating administrative law or certain rules of social co-existence (the legal factors constituting a crime or an infraction, akin to one another, are found in both categories); (b) infractions are separated from crimes by the nature of conduct much less dangerous to society; (c) the offender is punished mainly with a fine, i.e. a typically administrative legal sanction; (d) only those conducts and acts are infractions which have been expressly declared as such by a source of law; (e) special infraction proceedings are instituted in cases of infraction.<sup>146</sup>

The separation of infraction proceedings and the competent organs from all types of the judicial organization is not simply a question of expediency (to release courts from petty matters) as has often been held even in the socialist countries; it is a matter of principle first of all. Along with the low degree of danger to society, proceedings by a criminal court are replaced by a *different type of sanction*, by a most simple procedure and *not too heavy retribution*. An act violating the law is present here, too, but on a lower degree—just as the imposition of legal detriment with less intensity. Since infractions are unlawful acts of lesser importance, but occur in relatively large numbers, the organs acting in such cases are not the judicial organs of complex procedure supported by a system of guarantees; the organs of administration, accustomed to simpler procedures and dealing with such cases as a routine, have jurisdiction in infractions in the socialist countries.

Consequently, these organs do not resemble the judicial organs in respect of procedure. The subject of their procedure is different, there is often a complete lack of the adversary procedure (e.g. in various forms of fining), and the organs dealing with infractions enjoy no independence in the judicial sense, they are subordinate to state administration. Owing to the entirely different features of infraction proceedings, the fact that, in the individual case, the decision is made on the basis of general norms, is pushed into the background and we certainly cannot speak here of a judicial organ in the original sense of the term.

The organs dealing with infractions are incorporated in the organizations of state administration in the socialist countries. Such are the expert

<sup>146</sup> Berényi, S.—Martonyi, J.—Szamel, L.—Szatmári, L.: *Magyar államigazgatási jog* (Hungarian administrative law), General part, Budapest, 1966, pp. 396–398.

committees acting as infraction authorities in the community national committees of Czechoslovakia (the expert committee for public security proceeds if the rules of socialist co-existence are violated; the agricultural expert committee deals with infractions against agricultural property; the expert committee for construction where the rules for building and demolition are not observed; the school and cultural expert committee deals with the neglect of compulsory school attendance). In Poland, according to an act of 1951, amended in 1959, so-called administrative-penal collegia (*kollegium administracyjno-karny*) proceed in most cases of infraction; they are organized in the voivodeships, and certain towns, and are subordinate to the local organs of public administration. (Such collegia may be organized on the community level only with the consent of the superordinate organ of public administration.) The sanctions to be imposed are the following: censure, fine and punitive detention. The authority of these collegia does not extend to taxation, to financial matters, to matters under central control such as shipping, mining, weights and measures. The importance of infraction collegia is emphasized by the fact that Article 56 of the Polish Constitution of 1976 mentions them separately among its provisions on courts. Paragraph 2 of Article 7 of the GDR Infraction Act of 1958 assigned the right to institute procedure to the heads and deputy heads of central state organs, to the president, deputy presidents and vocational members of the council in case of local organs, and to the heads of special inspectorates, controlling organs and other institutions.

Hungarian infraction proceedings and organs are regulated by Act I of 1968. The following organs act in cases of infraction: the infraction authorities of the councils (the administrative organ of the executive committee of the village council; the district and town district office; the administrative organ of town councils and Budapest district councils; the administrative organ of the council executive committee; and the immediate superior administrative organ as authority of second instance); the financial organs enumerated in statutes; the central police offices; fire-protection headquarters; other organs (public health inspectorate, commercial inspectorates, district mining inspectorates, National Mining Chief Inspectorate); in the field of labour safety, the trade union labour safety inspectors; the labour safety inspectors of artisans' co-operatives, or the trade union organ to which the inspector belongs, and the president of the National Council of Industrial Co-operatives.

Owing to the fundamentally different features in relation to their jurisdiction, procedure, and organizational pattern alike, we cannot place the infraction organs among the organs of the administration of justice. Yet, one problem still remains: the experience of the past years shows that, despite all this, there is no clear division-line between the acts and

conducts we regard as infraction, and the acts which, according to legal factors, constitute a crime. Legal policy is to regard the social dangerousness of certain acts. Consequently, the legislator may order the implementation of court proceedings instead of infraction proceedings, or vice versa. But this legislative change cannot take place only on the basis of subjective decision: the basis can only be the objective demand of society. And what is changing in this case is not only the form of procedure and the proceeding organ; it is, first of all, the relation of the offender's act to the endangerment of society. If such endangerment decreases below a certain limit, the executive-directive, i.e. administrative organs proceed in the case, and accordingly the sanction becomes a simple administrative fine (or, rarely, punitive detention). This, however, must be taken into account not only by the legislator, but also by the applier of the law who must shape his decision in accordance with the degree of danger to society. The circumstance that certain acts are placed in this or that category is no proof of decreasing or increasing criminality; the proper handling of the principles of legal policy demands just the opposite, namely that the organ entitled thereto should impose in accordance with legality and statutes (which must be based on criminological-sociological studies) a suitable sanction which *corresponds to the given degree of danger to society*.

When I discussed the new branches of the administration of justice, I only touched upon the question of constitution courts. The reason is, on the one hand, that such an institution exists only in one socialist country, in Yugoslavia, and it operates with remarkable intensity and conclusions. On the other hand, I feel that we must consider this question together with the problem of controlling the state organization (controlling as to constitutionality in our case) in the next Chapter. In this section I should like to discuss two issues briefly: collective judicature and the constitutional relations of the lay assessors.

Some socialist constitutions expressly declare the compulsory nature of the system of collective judicature. Article 46 of the Hungarian Constitution provides for collective judicature with the addition that exceptions can be provided by the law. Article 228 of the Yugoslav Federal Constitution contains a similar provision according to which procedure by a single judge ordinary may be provided only by statute; Article 154 of the Soviet Constitution and Article 137 of the Korean Constitution provide for collective judicature without limitation. Other constitutions—the Polish, Bulgarian, Albanian, GDR, Mongolian, Chinese, Vietnamese—do not mention the institution of collective judicature, but in view of the fact that they declare the compulsory participation of people's assessors, they contain this institution implicitly. (The Rumanian Constitution mentions this in connection with the courts of first

instance.) The conclusion is, then, that these constitutions do not regard collective judicature as an impenetrable principle. But the traditions of collective judicature have proved rather strong up to now.

The question of the participation of the lay, popular element is raised in the constitution in another way. Namely there is no socialist constitution which does not make the participation of *people's assessors, jurors*, non-professional judges compulsory. The Chinese and the Vietnamese Constitutions provide no possibility in principle for leaving out people's assessors (Article 41 and 99 of the Constitutions, respectively). In Poland (Article 59), Hungary (Article 46), Bulgaria (Article 127), Albania (Article 102), Mongolia (Article 64) and in Yugoslavia (Article 229), the Constitutions order the participation of people's assessors in the entire judicature; an exception to this rule may be provided by the law. Paragraph /2/ of Article 94 of the GDR Constitution only speaks of the election of assessors without defining their sphere of activity. Article 152 of the Soviet Constitution and Article 107 of the Rumanian Constitution order the participation of people's assessors only in courts of first instance, and permit statutory exceptions; the Korean Constitution orders this composition of court of first instance, without permitting exceptions (Article 137). (The regularion of the assessors' system of the GDR was further extended by Article 52 of the Code of Criminal Procedure of 1968: it did not only lay down the task of participation in procedure, but also emphasized the analytical, collective educational and advisory tasks to be performed among the population.) It appears from this rather mixed picture that the constitutional position of the lay assessors' system is by no means absolute—especially not if we add to our former conclusions that the statutory exceptions lead to the same solution as in the Rumanian constitutional model: to the participation of lay assessors in the proceedings of courts of first instance.

The lay assessors' system emerged after the consolidation of the socialist system of professional judges, as one of the forms of the people's participation in the administration of justice. Since the increase of the influence of specialized jurists in courts followed naturally from the requirement of socialist legality, the institution of lay assessors was used as a counterbalance in order that the assessors represent the moral standpoint of the population, especially of the working class and kolkhoz peasantry, before the specialist organs. This is needed first of all in cases where not only legal questions must be decided, but social conditions must be evaluated as well. This gives rise to the requirement that lay assessors should work first of all at courts of first instance which examine issues of facts. Where some specialized organ of the administration of justice deals only with legal (or legal and economic) technical questions, not even collective judicature is absolutely necessary. This was the case

with the Hungarian economic arbitration committee—prior to the judicial reform—where the cases were always decided by a judge ordinary, despite the fact that it was called a committee. (For fear of the term court, the term committee was applied.)

Several types of procedure were developed in the socialist countries for electing the lay assessors. In the Soviet Union and several other socialist countries, lay assessors are elected by the local councils (organs of people's representation) or occasionally by citizens. In the Bulgarian judicial organization, the judges and assessors of the people's courts are elected by the citizens for three years, while the higher courts are elected by the organs of state authority of the corresponding level for five years. According to Article 230 of the Yugoslav constitution, "judges and citizens who take part in the administration of justice in regular courts shall be elected and relieved of office by the assembly of the competent socio-political community." This shows that the general trend of the Yugoslav model is election by the representative body.

In recent years several studies were conducted in the socialist countries about collective judicature and the assessorial system. The most important of them is the Polish empirical research conducted by Sylwester Zawadzki.<sup>147</sup> It appears from this study that the lay assessors at Polish courts perform a threefold function: they act as social judges, exercise social control, and are connecting links between courts and society. Experience shows that the courts study the cases more thoroughly as a result of the participation of lay assessors. In the cases covered by this study, there was a difference of opinion between professional judges and lay assessors in 40 per cent of the cases. As a matter of fact, this study presents two constructions in connection with the assessors' activity. According to the first one, the judicial function of the professional judge and the lay assessor becomes increasingly equivalent. (It appeared from the questionnaires that about 98 per cent of the assessors, 70 per cent of the judges, 67 per cent of the lawyers, and 65 per cent of the procurators approved of the assessorial system.) According to the other construction, the assessor is under the officious care of the professional judge. According to Zawadzki, the steady development of the assessors' system would require a better selection of the assessors, more help from the judicial organization, and a change in the relationship between the professional judge and the lay assessor. Several suggestions were made as a result of this study. They include one according to which the extension of the lay assessors' system to the appellate proceedings ought to be considered. It was further suggested to grant immunity and increased legal

<sup>147</sup> The material of the summary was published under the title: "Model ustrojowyawnika budowego w swietle badan prawno-empirycznych," in *Panstwo i Prawo*, in volume XXII. 1968, No. 2, pp. 113-114.

protection to lay assessors. The findings of this study, as well as the examination of positive law show that the problem of our days is to equilibrate the guarantees of legality and popular participation, i.e. the democratization of jurisdiction, in collective judicature and the assessors' system. Both tendencies have an important role today. We can hardly agree with the view that democratization and social control are unnecessary in the administration of justice (and that therefore it is appropriate to reduce the assessors' system and to make the system of single judges dominant). Neither is the other view acceptable according to which special courts should be replaced by some abstract democratization, thereby denying in the modern socialist administration of justice the importance of specialized judicial work. Today the constitutions usually give ample scope to collective judicature and to the appropriate modification of the assessors' system. Modern requirements can be re-formulated within this compass.

### **3. The Place of the Administration of Justice in the Contemporary Socialist State Organization (Checks and Balances)**

So far I have tried to accomplish two tasks in this Chapter: to define the concept of the administration of justice in a modern way, and to "review" the real organs of the administration of justice in the socialist state of our days. In this connection I had to break through a wall erected out of tradition around the principle of the monopoly of the administration of justice. I have shown what specialization has been going on in recent years in the organs of the socialist administration of justice. Two alternatives may follow from this: (a) the promotion of the specialization of the organs acting in cases coming under the jurisdiction of the former general (regular) courts, while the spheres of activity are left, in essence, unchanged, i.e. this does not cover the *entire jurisdiction of the administration of justice*, only its internal specialization is increasing; (b) the sphere of activity (jurisdiction) of the courts and other organs of the administration of justice expands as well, and specialization affects primarily cases and groups of cases which formerly did not belong to the competence of these organs.

But these two alternatives are each true in themselves and together as well, moreover we may say that one of the courses of development has promoted the formation of the other. If we say that, as a consequence of the specialization of courts, the legal and other special knowledge of the judges improved, i.e. that they were able to solve their tasks with greater expertise in the given narrower field of the administration of justice, the

result was that the legislator entrusted the specialized organs of judicature with new tasks in a special field with greater confidence. Let us think of the simplest examples—where we may speak of specialization in a limited sense—such as economic judicature, or arbitration. This branch originated in ordinary civil judicature beyond doubt; as a consequence of its position, modern working methods, it became capable of accomplishing tasks which regular courts have never performed. Or: the regular, general courts themselves have proved that they are important forums of the protection of socialist legality. Consequently, the legislator granted them new powers at one point where the danger of violating the law is the greatest: in administrative procedure, in order to protect the lawful interests of the citizens. Hence these two tendencies can hardly be separated—they indicate the two facets of the same trend which is the administration of justice specializing in its growing tasks.

Interesting changes of views can be seen in most socialist countries in the recent literature on state theory and constitutional law. The essence of these may be summed up as follows: the interpretation—with the inspiration like that of a Montesquieu—of the socialist constitutions and of the Soviet Constitution of 1936 that preceded them, ceased to exist on the state-organizational line. Vyshinsky, in his work *The Law of the Soviet State*,<sup>148</sup> originally gave an example of how it was possible to separate those parts of the Soviet state organization from one another which are separated also on the constitutional basis, and how it was possible to make the internal hierarchical structure and subordination absolute. This logically most attractive theory permitted in principle only the organs of state authority and representation to exert an influence on other branches (administration, courts, procurators), but put barriers between the various branches elsewhere, and emphasized their relative independence of one another (e.g. the procurator may have ascertained and objected to the violations of law by organs of the state administration, but was not authorized to take action in such cases, etc.). Maybe there was a period in the development of the socialist state organization when the stressing of the independence of certain types of organs was necessary in order to develop their organization and see to their tasks without patronage. But, eventually, it was not possible to maintain a model which tried to separate its various parts from one another in an extremely strict manner. (I have already touched upon the relations of peoples's representation and administration organs, moreover, I mentioned that changes occurred also in other fields, as regards e.g. those of central and local organizations.)

It seems from all what I have tried to sum up above that literature follows and makes perceptible, only the superficial phenomena. It is a

<sup>148</sup> Vyshinsky, A. Y.: *The Law of the Soviet State*, New York, 1951, p. 321. et. seq.



generally known fact that the scope of judicial activities has expanded in the socialist countries, especially during the last decade, as compared to the earlier separation of powers and the accompanying theoretical considerations. Studying the internal proportions of the state organization, István Kovács writes: "The gradual expansion of the role of the judiciary and its significance may be observed in the government organizations of the socialist countries as a generally prevailing trend."<sup>149</sup> But his examples are not convincing enough because, in order to prove this, he mentions the supervision of the Supreme Court of the Soviet Union over judicial activity, the right of consultation of the president of the Hungarian Supreme Court at the sessions of Parliament, and the particular immunity of the judges. His conclusion is however in accord with the standpoint of many socialist constitutional jurists; all this has to be completed with an exact definition of the course of development and with a demonstration of its causes.

One most misleading feature of the development of the new model is that today it is not, or only hardly, reflected on the constitutional level (despite the fact that this tendency emerged more than fifteen years ago, and that new constitutions have been drawn up in several socialist countries since then). Although the serious consequences of this change in powers have not been recognized even in the theory of constitutional law, they now must be reckoned with on the constitutional level, and we must say that this modification has taken place in "constitutional reality" also where constitutional law seems to be unchanged. We must notice this especially where the judicial remedies have been made possible in the course of administrative procedures.

The new course has been reflected on the constitutional level in two states. In Yugoslavia, Article 221 of the Federal Constitution of 1974 declares that regular courts "decide on the legality of individual acts of state agencies and organizations in charge of public powers. Therefore it appears that the Yugoslav Constitution has enacted a general clause for proceedings in court in the course of the administrative procedure.

The other Constitution, following a similar pattern, is the Rumanian one which touches upon this competence in several passages. Article 35 declares in connection with the basic rights and duties of citizens: "A person whose right is violated by an unlawful act of a state organ may request, under conditions defined by the law, the invalidation of such acts and the reparation of damages by the organs concerned." And in Paragraphs (2-3) of Article 103, it concretizes the principle (stated in Article 35) for the courts: "In cases defined by law, courts of justice and other courts exercise supervision over the decisions of administrative or

<sup>149</sup> Kovács, I.: *op. cit.* p. 384.

social organs performing the administration of justice. Courts of justice and other courts pass judgment on the petitions of persons whose rights have been violated by administrative acts, and may decide also as to their legality within the compass laid down by the law." This is a general clause again; this authority can be restricted only by special statutes by laws in this case. (This was actually provided for in Articles 14-16 of Act 1 in 1967 on the judging of petitions in such cases.) Article 104 of the Constitution of the GDR, pointing out that organs of administration of justice may play a role in compensation of damages caused by state officials, declares: "In case of damages inflicted on the citizen or his personal property as the result of unlawful actions of employees of state organs, liability lies with the state organ whose employee caused the damage." Conditions and procedure are regulated by a separate statute.

Constitutional regulation was preceded by a few basic laws which made so-called administrative lawsuits possible in socialist countries, without restriction, or within defined limits. The first of these was the Yugoslav act of 1952 on the judicial revision of administrative measures. The general administrative procedural act of 1956 mentions the judicial way as a legal, valid means. (At that time, otherwise, the General State Administration Act of 1930 was applied.) The next step was taken by the Hungarian legislation in Act IV on State Administration Procedure of 1957 which made available the judicial recourse in administrative matters for guaranteeing legality. The Czechoslovak Act of 1967 declares in Article 70: "Separate statutes will determine the cases in which courts reconsider the decisions of administrative organs." This provision left the regulation of the judicial way to the future legislation, which, in fact, issued the concerning statute, in the form of implementation of the Constitution of 1965, a month later. This dealt with the decision of petitions of citizens whose rights were violated by state administration. Here I wish to mention again that Articles 57 and 58 of the 1977 Soviet Constitution refer to the judicial protection of the rights of citizens. The only socialist country was Poland in which legislation did not make available the judicial way in administrative matters.

What is the reason for this legislative interest in judicial procedure? Chapter VI of the Hungarian Act on Administrative Procedure provides a fairly clear answer, especially Paragraph 1/ of Article 57, and items b/, c/, d/, e/ which make available the judicial way if this is permissible under the law, law decree or government decree. This Article itself enumerates procedures where the judicial way is available. For the purpose of our study the most interesting ones are these: the requisition of flats or parts of flats, the refusal to approve of the exchange of flats, the refusal to vacate the attachment of property in administrative procedure, taking

land or other property into ownership, the legal title of imposition of taxes and duties. Paragraph /1/ of Article 57 enumerates procedures in which the administrative apparatus violated the law *en masse* prior to 1957. Thus the intention of this act on administrative procedure was to counterbalance the activities of administrative organs with the aid of courts.

The main advantage of the judicial recourse is that the judiciary, as a result of its composition and organization, is able to perform efficient, independent legal activity, to adopt the standpoint of legality, because it has no interest in judging the work of administrative organs. In Hungary, after 1949 (and in other socialist countries, after the adoption of constitutions), the separation of the administrative branches had the result that—in an unfavourable political atmosphere—the administrative apparatus dealing with the individual cases of the citizens abused its independence and often produced decisions violating the law which could not be revised. It could not be expected that higher organs of state administration which often gave orders violating the law, would exercise their right to annul or change the unlawful administrative decisions. Hence, checks and balances had to be found by which not the independence, but the unlawful practice of administration could be eliminated; this was possible only through authorizing in a favourable political situation an organ—independent of state administration—to revise the decisions of the administrative apparatus. Act IV of 1957 found the way and entrusted the courts with this task, and equilibrium was established between the administrative organization and the courts in administrative procedures.

In order to keep this equilibrium intact, Hungarian legislation laid down the following conditions: (a) the judicial recourse was *not generalized* for the entire field of administration, only for cases where the courts could be of actual assistance at endangered points of legality; (b) the *internal independence* of the administrative apparatus was *not restricted* because the access to court was open only against final administrative decisions; (c) the said Act contained the possibility to *extend* the judicial recourse, but not to make it general. Whether this Act found the proper proportions and equilibrium may be questioned, but the entire trend is most instructive because the need for an *equilibrium* in a very important sector of the state organization was placed in the *centre* of legislation. The former preponderance of administration was not replaced by a preponderance of the judiciary, it was replaced by a state of balance in procedures affecting the interests, rights and obligations of the citizens.

(All this, however, has its antithesis, too. Namely, the problem: which are the general rules and norms, on the basis of which organs of the administration of justice are operating. The norms of higher administrative organs—compulsory in administrative procedure—are binding also on the courts in their revisional proceedings—provided that these norms are not

contrary to the law. This means that the organs of the administration of justice act—*among others*—on the basis of administrative rules, but—on the other hand—“interfere” through judicial means with administrative procedures specified in statutes.)

The Yugoslav and Rumanian Constitutions and further provisions have chosen a different course. Access to court procedures was opened constitutionally in both countries, and lawsuits in connection with administrative cases were regulated by statutes. The latter realize especially the relationship between state administration and judicature. It may be said that access to courts was made general—or was excluded only exceptionally. The Yugoslav statute much earlier than the Rumanian one provided as follows: (a) Action may be brought against an administrative measure and in case of unlawful inaction on the part of the administrative organ (these measures are to be understood according to Article 6 of the statute as administrative decisions by state organs, work or other organizations, concerning the rights or duties of individuals or organizations). (b) Administrative action is excluded by Article 9 in cases where judicial protection is ensured without such an action, if it is expressly prohibited by a federal statute, if decision is constitutionally reserved for the federal *skupshtina*, the *skupshtina* of the republic, the councils of these, or the president of the republic, and—finally—in disciplinary matters. Evidently, the restriction of administrative action can be effected on the basis of a later federal law.

The essence of the Rumanian regulations is this: (a) A person whose rights have been violated unlawfully by an administrative act may request the annulment of such an act at court and may request the reparation of damages. (b) The lawsuits are introduced by a preliminary procedure: the injured person must turn to the administrative organ before filing his petition with the court, and if he is not satisfied with the administrative decision, he may go to court within 30 days. (c) There is *no statutory restriction* on filing the petition only if a final administrative decision already is in force. (d) There are many exceptions which make it impossible to treat the administrative suit as general, such as administrative acts connected with national defence, state security, public order, acts in connection with the national plan; acts, which, according to law, are subject to another procedure of legal supervision; acts in which the administrative organ takes part as a subject at civil law; urgent measures taken for the prevention of epidemics, plant diseases, in cases of other disasters or states of emergency; measures connected with taxes, duties obligatory insurance premiums. As we see, Rumanian legislation permits court intervention on request on a large scale, because it may interrupt the administrative action, but excludes it at the same time from fields whose sensitiveness in this respect is well known.

But the question cannot be closed down with this. In the socialist countries where no administrative procedural codes, no statutes on the access to courts have been enacted, access to courts in special proceedings has been opened up more and more in recent years. In the Soviet Union, the Civil Code of 1964 of the Russian Republic contains a number of provisions which, in fact, permit access to courts in administrative matters. A similar trend is seen in the special procedures in the GDR and other socialist countries.

On the other hand, the "judicial recourse" is not limited to administrative procedure in the strict sense, but is extended also to acts of other organs. Paragraph /2/ of Article 8 of Act III of 1966 (Hungary) remits the complaints against the omission from the register of voters to district courts; in such cases the district court passes a final decision on the basis of Paragraph /1/ of Article 9 with extra-judicial procedure in three days. In this case the court acts and decides on the basis of a right of the State. The Budapest Municipal Court has similar jurisdiction (according to Paragraph /1/ of Article 18 of Act V of 1957) in connection with proving the existence, loss, or non-existence of citizenship. A certificate to this effect is issued by the minister of the interior, according to Paragraph /1/ of the same Article. But the facts contained in such certificates may be contested at the said court whose final decision has legal effect towards everybody.

Three different models emerge from the point of view of our considerations: (a) *judicial preponderance* over the administration (general authorization for access to courts); (b) *balanced* relationship between courts and administration (general administrative procedure where the courts interfere at the most sensitive points of legality); (c) the *preponderance of state administration*, only occasionally, with administrative lawsuits, and not even at the most sensitive points of legality. Three greatly different trains of thought are behind these three models. The first is the belief that the rights of citizens can be protected only by the safeguards of the judicial procedure. (Independence, adversary procedure, strict rights and obligations, applicable legal remedies.) The second model shows the intention that trespass by various organs of the state organization must be *mutually* eliminated and that uncontrolled power of any organ within state organization must be prevented. The third view is based on an earlier model: it holds that the representative organs creating the administrative ones have sufficient powers and guarantees for controlling the administration and protecting legality, and that popular legitimation and control is missing exactly from the judiciary. It is only natural that it is not possible to decide for any of these three models with isolated study. The ideas on the general model of state organization, the determination of internal correlations alone can give an answer to the elaboration of the model of the administration of justice.

Access to courts is not the only indication of the fact that the role of the administration of justice has changed in the socialist countries in recent years. The role of courts is also new in that they come near to the level of *norm-making* in the application, in the interpretation of law as well as in their decisions of principle. It may even be asked whether this function is not shifting towards filling the "gaps in the law". And here we must again oppose, as a "dual reality", the facts of constitutional regulation (as our state organization not only acknowledges these, but even keeps to them) to the contrary practice of the judiciary, which, however, is not objected overtly by the dissenting part of the state organization, obviously for practical reasons. The fact remains, however, that the latter trend emerged in almost every socialist country—first in the Soviet Union—meeting with considerable resistance. Before examining the original trends, I refer to the standpoint of Tyshkevitch, according to which "the plenary session, transgressing its rights laid down in Article 75 of the judiciary act, has occasionally framed new statutory provisions."<sup>150</sup> The same author mentions that, considering the actual situation, certain Soviet scholars regard the decisions of principle of the Supreme Court as legislation, as a source of law.

It must be taken into account that the position of the courts, first of all that of the supreme courts, was influenced by the socialist constitutions through granting them special rights. This appeared in the Constitution of 1936 as follows: "The Supreme Court of the USSR is charged with the supervision of judicial activities of all the judicial organs of the USSR and of the Union Republics" (Article 104). A similar provision is included in Article 153 of the new Constitution, too. The Chinese and the Vietnamese Constitutions define the same jurisdiction in Articles 42 and 103. Article 47 of the Hungarian Constitution went beyond this by declaring that: "The Supreme Court of the Hungarian People's Republic exercises supervision over all questions of principle, over the judicial activities and the administration of justice." Article 104 of the Rumanian Constitution states: "The Supreme Court exercises general supervision over the judicial activity of all law courts and other courts. The manner of this supervision is regulated by law. In order that the laws should be applied uniformly in the administration of justice, the Supreme Court passes guiding decisions." Article 93 of the Constitution of the GDR declares that "the Supreme Court directs (*leitet*) the jurisdiction of the courts on the basis of the constitution, laws and other statutory regulations of the GDR. It ensures uniform application of the law by all courts", but enumerates no legal means of doing so.

<sup>150</sup>Tishkevich, L.: (Are the Authoritative Principles of the Plenary Session of the Supreme Court of the Soviet Union Sources of Law?) *Cikkgyűjtemény*, 1955, Vol. 12, p. 536.

In the socialist countries, where this right of the supreme courts was not laid down in the constitution, it was mostly defined in statutes on the judiciary. The 1957 regulation of the Supreme Court of the Soviet Union states in item /c/ of Article 9, that the plenum of the Court passes guiding explanations on the application of laws to the courts; item /a/ of Article 26 of the Czechoslovak act of 1961 declares that "the Supreme Court ensures the explanation and uniform application of laws and other statutes especially by issuing guiding principles for the proper explanation of laws and other statutes". Item /a/ of Paragraph /2/ of Article 30 vested the plenary session with this function.

What is the consequence of the fact that the supreme courts make use of this right—despite statutory prohibition—in non-regulated fields in respect of what is called law-making by the appliers of law? Vilmos Peschka, when conceiving the consequences in reality, says this: "The decisions of principle of the Supreme Court containing new norms . . . are qualified as legislation partly with the tacit approval and consent of legislative and other competent state organs, and partly through the particular position of supreme courts in the system of state organs as a result of which these decisions have a certain general validity."<sup>151</sup> Imre Szabó very clearly separates these two types of function: his argument does not state that the creation of law by the appliers of the law is prohibited by the constitutions, but he makes reference to the rational division of labour of these two organizations saying that the view on the non-separation of legislation and law application "disregards the dissimilar natures of these two functions, as regards state and political issues, the different ways of their organization because of their different principal functions and their different position in the system of the state organs."<sup>152</sup>

Not only the guiding principles of supreme courts appear as "secondary" legislation in certain socialist countries: an increasing general effect is attributed also to the individual decisions of other courts, or reference is made to their "radiating" effect quasi as precedents. This is especially valid for Hungary, and is connected with a slow advance of legislation of the highest level in certain fields. This slowness, so to say, reproduces non-regulated fields. Courts face almost insoluble tasks if they cannot apply analogies. So they try manoeuvres of "interpretation" instead of looking for answers at the legislation. That is why the suggestion to grant supreme courts the right of initiating legislation arises more and more often in the socialist countries. (This was actually included in the

<sup>151</sup> Peschka, V.: *Jogforrás és jogalkotás* (Sources of law and legislation), Budapest, 1965, p. 150.

<sup>152</sup> Szabó, I.: *Jogszabályok értelmezése* (Interpretation of statutory provisions), Budapest, 1960, p. 223, footnote 87.

Mongolian Constitution of 1960 and the Bulgarian Constitution of 1971). In order to realize the power position of the Courts, the question of what is called *norm-control* must be considered in addition to all this. (Paragraph /2/ of Article 85 of the Bulgarian Constitution declares that only the People's Assembly "may decide whether a given law contradicts the constitution . . .") In most socialist countries, the courts may not invalidate state norms that are unconstitutional or violate the law (with the exception of Yugoslavia where the existence of constitution courts creates a different situation). But what happens if higher organs of state power or administration are not aware of the violation of law, but there exists a clear contradiction between the constitution and an act or law decree or between an act and a ministerial decree? If the court has to apply the law in this field, it will apply either the constitution or the law, or a provision—formally valid—of a lower degree in the hierarchy of the sources of law. I am of the opinion that the court *must put aside* the provision of lower degree, but is at the same time *under obligation* to signal at once; and it exercises this way, in fact, *norm control*.

I have tried to outline some of the new features which show that a *new state of balance emerged within state organization* in most socialist countries to the *advantage of the organs of the administration of justice*. Besides specialization, this is the most important characteristic of our days in this respect. None of the three trends can be regarded as general in the socialist countries. The basic tendency is clear and we must take it into account even if not all its aspects are realized on the constitutional level.



## CHAPTER 11

# THE SUPERVISION OF THE STATE ORGANIZATION IN RESPECT OF CONSTITUTIONALITY, LEGALITY AND EXPEDIENCY

### 1. The Role of Supervision in the Socialist State Organization

In the preceding chapters but especially in Chapter 10 on the judicature, I have tried to present the new tendency developing in the relationship between the branches of the state organization. The system of the 1936 Soviet Constitution, which sharply separated the branches was replaced by a readily approved mechanism of checks and balances, although this is not recognized by the constitutions, nor by the most recent socialist literature of constitutional law, not even by state theory. This is a general experience and we shall come back to it yet. But first we must speak of a group of questions which shows that this is a very old problem of shaping the state-organizational model, and has come up again and again as a demand, at least within narrow limits.

I have indicated how limited the 1918 Soviet-Russian initial model was in this respect, and that, stressing full power of the Soviets, it outlined the Soviet organization taken only in the strictest sense: i.e. the Soviet Congress of the All-Russian Workers', Peasants', Red Soldiers' and Cossacks' Deputies, the All-Russian Central Executive Committee, the Council of the People's Commissars, the People's Commissariats, the Soviet congresses, their executive committees, the Soviets of the deputies (meetings of electorates) and the executive committees. This Constitution makes no mention of any other organ, including the organization of the administration of justice which had been established by that time. (What was at that time existing apart from the present organs of people's representation and of general power, was grouped into the general scheme of the People's Commissars, like e.g. the Supreme Economic Council and State Control.) The Federal Constitution of 1924 somewhat expanded the state model (with the Supreme Court in Chapter VII of Part II, and with the OGPU—Unified State Political Administration in Chapter IX). But the one-sidedness of the state organization survived in spite of the fact that repeated attempts were made to create many-sided guarantees for the operation of the state organization.

Two highly important documents call our attention to this. The first of these is Lenin's often-cited letter of May 20, 1922, on *Dual subordination and legality*. Here Lenin not only defined the foundations of the later organization of the procurators, but discussed also a number of questions relating to the external supervision of the state organization, "In substance, the point at issue is the following: On the question of the procuratorship, the majority of the commission elected by the All-Russian Central Executive Committee expressed opposition to the proposal that local procurators should be appointed solely by the central authority and be subordinate solely to the latter."<sup>153</sup> This commission would not accept a supervisory organ outside the "dual" system of subordination, i.e. not subordinate to the local Soviet organization. And it was exactly this wall that Lenin wanted to break through, for guaranteeing legality in this case. The model he suggested is very interesting because the maximum guarantee against local and personal influence is given already in the party institutions to which the procurators would be subordinated. (These party institutions are: the Organizational Bureau of the Central Committee, the Political Bureau of the Central Committee, and the Central Control Committee.) On the other hand: "Unlike the administration authorities, the procurator has no administrative powers, and has no power to decide any question of administration."<sup>154</sup> Thus, the organization of the procurators, in this state model is the following: (a) it is outside the organs it supervises and free from their influence, (a) it is of centralized nature, (c) it supervises the observance of full legality and must react to any violation of the law, (d) it has no administrative right of decision, which means that its activity is limited to signalization. This was a characteristic organization at a time when the absolute powers of the Soviets were emphasized and at the same time it was attempted to prevent the one-sidedness of their decisions and their violations of the law.

The other important document was dated 8 months later. It is Lenin's proposal of January 1923, published under the title: *How Should We Reorganize Workers' and Peasants' Inspection?* Here Lenin suggested to transform this control body (united with the Central Control Committee) into a smaller one consisting of highly qualified people experienced in organization and working with the participation of workers and peasants.<sup>155</sup> So what we see here is another organizational idea: a body working within the framework of the Council of the People's Commissars, in close relationship with the party organs, having close ties with the working population, and not influenced by the local Soviets.

<sup>153</sup> Lenin, V. I.: *Collected Works*, Vol. 33, Moscow, 1974, p. 363.

<sup>154</sup> *Ibid.* p. 364.

<sup>155</sup> *Ibid.* pp. 482-485.

Such and similar state organs emerged in fairly large numbers later on. Their characteristic was that they did not disrupt the customary forms of constitutional hierarchy; they brought no change to the subordination relations, to the rights of decision, of the organs enumerated there. To put it quite clearly: all were outside the strict hierarchy of the Soviets, or were at least free from dual subordination. They were centralized organs of central position, and had accordingly for the most part no other rights than far-reaching rights of examination and signalization. The literature on constitutional law of the last decades states this only in connection with the procurators' organization as a rule, although this feature was typical of all the external supervisory organs. Their force was their weakness at the same time: they had very wide power of supervision, while they had practically no powers in the field of annulment and revision. This resulted in a structure by which the internal delimitation of the administrative hierarchy remained intact (i.e. that unlawful acts could be remedied solely by these organs, except those central organs of state authority, which were vested with such rights by the constitution). The organs I have termed as supervisory ones criticized the operations of the constitutional organs of the state quasi from outside, but could not change the acts themselves. These organs were sooner or later elevated to the constitutional level, but their special position remained. The People's Commissariat of State Supervision figured already in the Soviet Constitution of 1918, and the chairman of the Soviet supervisory commission was among the members of the Council of People's Commissars in the Federal Constitution of 1924 (Article 70), but no all-union or union-republic people's commissariat of this type was working (Article 77-78). It is a well-known fact that the procurators' organization, with functions similar to the present ones, was first included in the 1936 Constitution (Chapter IX) but at that time as a separate branch of state organization. The position of these organs was rather inconstant—worker-peasant control, Soviet control; party and people's control investigated the expediency and economy of the operations of state organs, the procurators' organization investigated their legality—but they have played an important role in almost all socialist constitutional organizations since 1936.

It is typical of recent constitutional development that the limited possibilities of the supervisory organs are found to be insufficient and that more efficient methods are searched for; in most cases the aim is the protection of the principal rights of citizens and state. If this is so, it is not permissible that supervisory organs conduct any stubborn but complex and slow fight against the bureaucratic or unlawful operations of certain divisions of the state apparatus. This appears also from the opening up of the access to courts in certain socialist states.

It appears, however, as a clear trend at the same time that, apart from the administrative actions at law and the like, the older forms of control were maintained in the majority of the socialist states (e.g. the procurators' organization). The reason is that some of these new organs or procedures are not operative enough, or are difficult to set in motion. It is true that the judicial way may be more successful than remedying the same administrative procedure through the protest of the procurators' organization. But the operation of the procurators is almost automatic; jurists can ascertain the violations of the law almost as a routine in the field of administrative procedure or any other field. This amounts to a guarantee against violating the law in individual or mass cases especially when the lay public has difficulties in recognizing the personal rights and their violation, and in finding the remedies.

Experience shows that the supervision of the procurators and procedural forms of the external supervisory organs mainly permit to ascertain the general features of the organization to be investigated, to demonstrate the frequent violations of the law, economic and other deficiencies of operation; consequently it is not the individual cases that are in the centre of our considerations—what we are interested in is the repeated, the generalizable in the work of these organizations. This tendency in the activity of these organs must be ascertained despite the fact that given investigations always start from individual cases. In Hungary, for example, the prosecution employs the protest to be lodged with the organ committing the violation of the law in a given individual case as the most efficient means of legal supervision. And in order that the generalizable picture of the operations of state, social, etc. organs should not get lost in the mass of individual findings, under the law, the procurators' office can, and in certain cases must lodge an *objection* for indicating *law-violating practice*. This objection must be judged by the organ concerned within 30 days, the appropriate measures must be taken and the procurator must be informed. I do not underestimate the role of external control in individual cases, in the protection of citizens' rights. I only stress that the duty of these organs is to draw general conclusions from the masses of individual investigations (especially as there are other, more efficient means also available to protect civil rights, although within the boundaries mentioned above), not to content themselves with *ad hoc* signalization, but call attention to the general operations of the state organization. This way they are able to co-operate in the improvement of work in the field of legality and economy.

It is not enough for the citizen to find an organ for the efficient restoration of his rights *after* their violation. It is at least as important to provide organizational guarantees which exclude from the outset a practice that threatens the economic and other interests of the citizens.

Thus they may be sure that it shall not be necessary to protect posteriorly their rights and interests, by a long procedure, and by the aid of however strong guarantees.

We may conclude from all this that—without giving up the possibility of protection and assistance in individual cases—the activity of organs termed generally as supervisory ones is aimed primarily at the general improvement of the operations of the state organization concerning legality and expediency. But such improvement departs from the investigation of individual cases to reach general evaluation and to use the legal means which can change the wrong and harmful working methods and practice of the state apparatus.

However important the changed role of the courts is—in the protection of the rights and lawful interests of citizens first of all—they cannot perform the same function, and besides, this is not the aim of their work. Although in most socialist countries the codes of procedure prescribe signalization to the courts, and, in addition, the supreme courts play an important part in shaping legal policy (in their authoritative rulings and decisions issued by their collegia they summarize their opinion on lawfulness within the framework of the state apparatus), all this remains on an *ad hoc* basis and follows the harmful, disfunctional phenomena of the state apparatus only with a time lag. The rationality of the division of labour makes these activities of the courts unnecessary; all the phenomena which the courts perceive in these fields are usually available also to the procurator taking part in court procedures. In the course of supervision of legality the procurator can recognize such violations of the law in administration which cannot be noticed by courts because they were not subject to litigation; the procurator can recognize violations of law in criminal cases tried by regular courts, of cases in which economic courts, arbitration committees give signalization. The procurators' office can become in this way, as it were, the collector of the experience of the state apparatus (and other organizations). The efficiency and organizational pattern of the procurators' offices, their contacts established with the working population, render them suitable for performing their past and present role in the improvement of the socialist state organization.

The views which oppose judiciary recourse to the requirement of reducing the role of organs of control, especially the procurators—appearing so far rather in professional debates than in literature,—are wrong and untimely in my opinion. These organs do not perform the same function if they understand their aims correctly, and the means available to them are not the same. The advantage of courts in dealing with individual cases is their disadvantage in the sense that they cannot generalize their findings in order to prevent violations of the law and to improve the operations of the state apparatus. What appears as an

advantage with the organs of supervision, including the procurators, namely, efficient and prompt investigation, is a disadvantage on the other side: having disclosed the deficiencies, elimination of these does not depend on them. So only after overcoming the resistance of law-violating or uneconomically operating organs can such deficiencies be eliminated. Naturally, these two types of procedure can frequently be coupled and this is probably the most efficient method both for the individual citizen and the state.

Till now I have mentioned the so-called traditional (external) forms and organizations of supervision. As I have pointed out, the organization of supervision—with a variety of names and schemes, and its activities always based on the contacts with the masses—as well as the procurators' organization, for the control of legality emerged in the Soviet Union well before 1936. Later their model was consolidated in the sense that their sphere of tasks was described precisely and their working methods were firmly established. But in respect of actual control they have changed considerably in the recent years, and the solution of questions emerged which till then did not come up on the constitutional or lower statutory level—or, if discussed at all, they were of lesser importance for political or other reasons.

What I should like to mention first of all is that the protection of the highest degree of legality, of the constitutionality, got detached from the uniform pattern of supervision of legality in many socialist states. This problem arose in the socialist theory of constitutional law when general supervision of the procurators was not yet extended by the law (especially by the rules on the procurators' office of 1955 in the Soviet Union) to the whole of state organization. The supervisory rights of this organization were restricted especially vertically. We still may say that this supervision is generally missing from the central popular-representative and highest administrative organs. A few Soviet authors tried to interpret the function of the procurators' office extensively and to draw the working of the highest state organs into this sphere,<sup>156</sup> but all this did not alter the real situation. Socialist political science studied the most different fields of the activity of the procurators and protection of legality, and marked out very important fields for increasing supervision. These were not covered by the activity of the supervisory organs till then mostly because of some

<sup>156</sup> The standpoint of (Berezovskaya S. G.) Березовская, С. Г. is instructive in this respect: *Прокурорский надзор в советском государственном управлении – Общий надзор* (Supervision by the Procurators in the Soviet Administration – General Supervision, Moscow, 1954) according to which the procurator may lodge protest against acts of the Council of Ministers of the Autonomous Republics if they violate the law. In her work *Охрана прав граждан советской прокуратуры* (Protection of the Citizens' Rights by the Soviet Procurators), Moscow, 1945, she declared that the procurators must not overlook the violations of the law by the Councils of Ministers of the Federal Republics and the Autonomous Republics (p. 53).

obstacle of principles or organization. New organizational and procedural forms had to be found in the socialist countries, and a great variety took shape up to now.

The most characteristic issue of these fields is the protection of constitutionality. This became a central problem because attempts were made to extend the safeguards of legality on a very wide basis in the second half of the 1950s and in the 1960s. The requirement that the violation of legality must not be tolerated in any sector of state and social life, was formulated ever more clearly in the theory of constitutional law and in political life alike. But observance of legality already starts at the point that no state or legal act may be used as a mere means of agitation in the socialist societies of our days. The constitution—being the cornerstone of the entire legal order of the given state—must be considered from this point of view. So we came to meet the question of observing constitutionality as the hierarchically prominent problem of legality.

Other forms of supervision developed as well, but no more along the customary external supervisory powers and organization. It was not the self-supervision of the apparatus that improved (although this could not, and must not, be given up); it was the preliminary and subsequent control of the workers over the correctness of decisions passed in their own enterprise, and the adequacy of implementation thereof. This problem again gave rise to considerable variety, depending on the ideological standpoints assumed in these countries about the socialist forms of ownership. Despite the great differences, the workers' right to have a say, direct or indirect, their control in the management of enterprises in socialist ownership (or "mixed" ones) is now made possible in almost all the socialist countries. In fact this is also a field of supervision, which I have referred to in Chapter 9.

## 2. Supervision of Constitutionality

When summing up the particularities of socialist constitutions in a Hungarian textbook on constitutional law, János Beér enumerated the following features: "(a) The socialist constitution is a *fundamental law* which embraces the fundamental relations of the country's social, political and state life, and expresses the statutory standpoint precisely in this connection; (b) it reflects the real situation, the *results attained*, and expresses the concrete course of further development essentially through these; (c) it is issued in written form (in the form of an act), and (d) its *admdndment* and alteration demand greater procedural safeguards than ordinary laws."<sup>157</sup> It was emphasized here that the constitution was a

<sup>157</sup> Beér, J.—Kovács, I.—Szamel, L.: op. cit. p. 56.

law, just as in the greater part of the socialist literature. Umansky sums up the four characteristics of the constitutions in the following: it is the fundamental law of the state, the basis of the entire legislation, the rule of the greatest force in the given country, and a law whose enactment and amendment is subject to special rules.<sup>158</sup> Lepeshkin says essentially the same: the constitution comprises the most important institutions and principles of public law; its norms possess the highest legal force whereby these norms are the foundations of legislation in given periods; and, finally, he speaks of the particular rules of framing and amending the constitution.<sup>159</sup>

These fundamental views represent a constitution as some "super-law". Constitution and law, constitutionality and legality, and, consequently, the supervision of the observance of constitutionality and legality, must be regarded as rising from the same roots. The priority of the constitution<sup>160</sup> is actually nothing else but the uniform handling and observance of the primary and fundamental rules of legislation, the prevalence of the constitution-makers' will during the entire course of legislation. In view of the fact that in the socialist countries the framer of the constitution is the ordinary legislative body itself (the supreme organ of state authority and representation of the people), or the ensemble of this organ and of the electorate (referendum), the process of law-making does not differ in form from that of framing the constitution. This uniform view had the effect that in the socialist countries the protection of norms included in the constitution and their legality was sought for in the same way for quite a long time. For considerations of principle and practice, the supervision over the observance of the constitutional provisions was placed in the category of simple supervision of legality, thus constitutional supervision was not extended to a wider field than was originally covered by the supervision through the procurators' office. The right of operation of any organ going beyond this was rejected by the socialist literature of constitutional law for the most part, even the institution of constitutionality was involved in legality. It should be noted that certain socialist constitutions make remarkable statements on the institution of constitutionality even if they do not always use this concept. The most interesting and precise formulation among the former popular-democratic constitutions was used in the Hungarian Constitution in Article 77 after amendment: "/1/ The constitution is the fundamental law of the Hungarian People's Republic. /2/ The constitution and the constitutional rules of law

<sup>158</sup> (Umansky, Ja. N.) Уманский, Я. Н.: *Советское государственное право* (Soviet state law), Moscow, 1959, pp. 37-38.

<sup>159</sup> (Lepeshkin, A. I.) Лепешкин, А. И.: *op. cit.* p. 138.

<sup>160</sup> Cf. *op. cit.* p. 201, where the author gives an outline of the history of constitutional priority.



are obligatory for all organs and all citizens of the State." Paragraph /3/ of Article 142 of the Czechoslovak constitutional Act of October 27, 1968, which replaced Paragraph /2/ of Article 11 of the Czechoslovak Constitution of 1960 formulates the requirement of constitutionality as follows: "The Acts of the Federal Assembly, the Acts of the national councils, and the other statutes of the federal organs and those of the republics shall not be contrary to the constitution and Acts of constitution of the Czechoslovak Socialist Republic. The interpretation of all statutes shall agree with the constitution." The 1974 Federal Yugoslav Constitution devotes a whole chapter to the institution of constitutionality—and legality—to which we shall return later. Articles 105 and 106 of the Constitution of the GDR worded the requirement of constitutionality in a particular manner departing from the formulations mentioned so far: "The constitution is directly and binding law. The constitution may be amended only by the People's Chamber of the GDR through a law which expressly amends or supplements the text of the constitution."

The fact, however, that in the recent years the requirement of constitutionality was increasingly emphasized in the constitutions themselves and the fact that it became detached from the institution of legality on the constitutional level, did not amount to the efficient protection of this institution. Quite on the contrary, the literature on constitutional law took a negative or passive attitude in general towards these new forms of solution. A search for new ones was started rather slowly. János Beér gave expression to the ideas of the early 1960s in a rather comprehensible manner: "The socialist states—including the Hungarian People's Republic—fully reject the idea of any variant of constitutional courts as one which is in contradiction to the socialist order of the structure of state organs, to the primacy of the rights of the supreme organs of state authority, and to their powers that are not to be limited."<sup>161</sup> As for me, I tried to present the problem of constitutionality in its totality in an article.<sup>162</sup> I tried to show that the problem is not solved in the state organization by pointing out the double dead end which is produced by the traditional constitutional principles and the new "practical" solutions alike. The scheme in the first case is this: the principle of popular representation, the fullness of sovereignty in the hands of the supreme representative body does not permit in principle, but moreover, even prohibits, that the supreme organs of state authority (the representative organ and its presidential organ) should come under the supervision of any other state organ. This standpoint may seem to be doctrinaire, but so far in socialist countries the primary conveyance of the principle of the

<sup>161</sup> Beér, J.—Kovács, I.—Szamel, L.: op. cit. p. 260.

<sup>162</sup> Bihari, O.: "Constitutionalism and Legality," *Acta Iuridica Academiae Scientiarum Hungaricae*, Tomus VI, (1964) Fasc. 1–2, pp. 112–117.

people's sovereignty has been the fundamental thesis of the constitution. It seems especially impossible that any "external" supervisory organ should annul or alter some act of the legislator with reference to the violation of the constitution. This would be an immanent contradiction because this way some other organ, created by and subordinate to legislation, would actually assume the legislative powers (in respect of cassation at least). And if hierarchical subordination were not declared, the entire state-organizational model would be changed fundamentally. Nor is it proved theoretically that some "external" supervisory organ—including the judiciary—is capable of assessing the measure of constitutionality more infallibly than the legislative organ vested partly or totally with the right of constitution-making. It is very difficult to find a theoretically and practically satisfactory solution. So, in my study, I did not support those who wish to cut the Gordian knot of the supervision of constitutionality simply with the aid of constitutional courts known in some bourgeois states.

I admit at the same time that the other model which simply rejects the possibility of a constitutional court, provides also no solution. At a time when the legislator—and a few other central organs—are withdrawn from the sphere of supervision by the procurators as regards legality, when the constitutional control over the legislator is reduced to a minimum, and, what is more, when the efficiency of supervision is only occasional, we cannot be satisfied with this solution. Moreover, the premise from which we start in this case, namely that the legislator does not violate constitutionality with his legal acts, cannot be regarded as realistic. This statement has actually a bad effect and does not make the basic norms of the constitution defensible at their roots. We must keep in mind that the requirement of a stable constitution produces sooner or later long-lived constitutions. And the consequence is that the legislator himself is moved further away in time from the constitution-making; this may render constitutional rules indistinct, the risk of misunderstanding the original constitutional idea is growing, or laws of opposite sense may be enacted unintentionally. This could be prevented through the amendment of the constitution, but the afore-mentioned requirement of stability hinders this solution. Thus the depreciation of the constitutionality-legality principle might begin on the highest level.

It seems, therefore, and I tried to point it out in my treatise, that new procedural-organizational forms ought to be found because of the deficiencies of both models; and here we must pay attention to the various attempts in socialist countries due to the intensification of constitution-making in the recent years.

The search for new forms of solution is typical of the works in Hungarian political literature of constitutional law published since then.

In his work entitled *New Elements in the Evolution of Socialist Constitution*, István Kovács has dealt with this subject-matter thoroughly. The author supports his view according to which this problem must be considered from the angle of constitutional development, with the following: "The special investigation of the constitutional character of legislation is merely justified by the distinctive feature of the constitution compared with legal rules the next below it in the hierarchy of the rules of law not only as regards the significance of the scopes brought under regulation by it, but also the abstract character of its legal structure, the methods of regulation and its provisions. This difference calls for the formulation of special guarantees, i.e. of special guarantees within the legality of legislation."<sup>163</sup> Investigating the possibilities of supervising the constitutionality of laws, Kovács sums them up in three points: (a) Parliamentary (committee), and presidential forms of preliminary control (possibly exercised by the government) have emerged. The role of the courts is also known in this respect, while quite recently also an organ quasi that of the administration of justice, the Constitution Council emerged (in France) as an organ assisting the president of the republic. (b) The *subsequent* supervision of the constitutionality of laws is judicial control all over the world, through special constitution courts or regular courts of law. (c) He explains that the assessment of socialist literature as regards constitutional law is acceptable even today: "... any legal measure which under the pretext of the protection of the constitution by a right of decision vested in either ordinary courts of law, or a constitutional court, or perhaps in a narrower committee of the legislation restricts the powers of the supreme representative organ is anti-progressive in bourgeois states and at the same time a limitation of democracy".<sup>164</sup> The opinion of Kovács on the *erga omnes* abolition of courts is that this was hitherto impossible in socialist countries. (He could not consider of course, the Yugoslav model which took shape a year later.) The Soviet and the Bulgarian literature mentioned that the courts had put aside certain statutes created on the lower level of the hierarchy if they violated the law or the constitution,<sup>165</sup> but he deems it impossible in the Hungarian legal system that any court should put aside a national source of law in the course of a judicial procedure. The judge must suspend his judicial work in such a case in order to indicate that there are difficulties in ascertaining the valid law. Kovács mentions many forms of signalization known in the

<sup>163</sup> Kovács, I.: op. cit. p. 436.

<sup>164</sup> Kovács, I.: op. cit. pp. 440-442.

<sup>165</sup> Bratus, S. M.: "Juridical Review and Control of Administrative Action", *Law in the Service of Peace*, Brussels, 1957, XII, pp. 29-36, and (Stainov, P.-Angelov, A.) Стайнов, П.-Ангелов, А.: *Административное право Н. Р. Болгарии - Общая часть* (Administrative law of the People's Republic of Bulgaria - General principles), Moscow, 1960, pp. 491-493.

history of socialist constitutions among others, on the part of courts. Making reference to the Soviet literature, he approves of the right of courts or other organs to make suggestions, and agrees with the constitutional laying down of this right.

The constitutional development of the subsequent years and the increase of the demand for socialist legality did not permit this question to come to a rest in Hungarian literature. I myself have made further investigations into this question;<sup>166</sup> the monograph of Kornél Pikler reflects the characteristic changes<sup>167</sup> and even if it is mainly concerned with the bourgeois field of subjects, he—though denying all parallelisms of the socialist, viz. bourgeois institutions of constitutional supervision—raises all the questions connected with socialist constitutional supervision in his final remarks: (a) "... the supreme organ of constitutional control of the socialist type... may only be the supreme organ of popular representation; and a constitution court altogether independent of it, or one reconsidering its acts, is impossible in principle". (b) The present forms of bourgeois constitution courts cannot be applied to socialist circumstances, but studying them might be thought-provoking. (c) A form of constitution judicature is possible in socialist countries which does not violate the constitutional principles of the state (this type of court must not be independent of parliament and its jurisdiction must not violate the activity of parliament). Pikler calls attention to the Yugoslav experiment in this respect.

The views set forth in the Hungarian literature on constitutional law reflect the changes which we usually see—and not only in Hungary—in the socialist standpoint of the last years. I have limited this description to the Hungarian standpoints only because the stand for complete rejection was not justified in the former Article 71 of the Constitution, but—owing to the prevalence of this ideology—the authors were hardly able to shake off its influence. However, later on, the situation changed and today the Hungarian theory of constitutional law is characterized by the fact that it tries to reconcile these two extreme standpoints.

A few words have to be said about the ideological basis of the most different view, the Yugoslav theory on constitution courts. Obviously, the differing institution rests on a different basis of the theory of state. What we must investigate here is how Yugoslav state theory tries to resolve the contradiction between the priority of the representative organs and the independent forms of constitution courts. In a study written immediately

<sup>166</sup> Bihari, O.: *Socialist Representative Institutions*, Budapest, 1970, pp. 158–181.

<sup>167</sup> Pikler, K.: *A burzsoá alkotmánybíráskodás* (The activity of bourgeois constitutional courts), Budapest, 1965, pp. 259–264.

after the adoption of the constitution of 1963,<sup>168</sup> Jovan Djordjević makes no efforts to answer this question, and only states that "no organ, not even the *skupština*, is entitled to exert influence on any act of our Constitutional Courts, or to interfere with their activity. The constitution courts perform their functions solely on the basis of the constitution and the laws enacted in the spirit of the constitution. The judges, who are fully independent in their activity, enjoy special guarantees and "privileges".<sup>169</sup> In another passage, discussing the socio-political bases of Constitutional Courts, Djordjević says that "in Yugoslavia the Constitutional court was established not for the purpose of having constitution-making powers; it may not become an organ framing constitution even later on . . . The task of the constitutional court is not 'to tell us what the constitution is' or to give shape—with the aid of the former or the new constitutional terminology—to a specific social and political 'philosophy', even legal ideology, of its own. The constitution court is but a constitutional institution. It is a constitutional factor itself subordinate to the constitution."<sup>170</sup> Thus Djordjević explains the incorporation of the constitution court in the general political organization by saying that its subordination to the constitution actually means its indirect subordination to the sovereign constitution making power. At the same time this is, beyond doubt, limited in time and can be realized, so to say, only when the new elections are held in the constitution court every eight years (or, when the constitution is amended, or a new one is adopted).

The other, much sharper view, was set forth by Vladimir Krivic.<sup>171</sup> He points out the idea of independence (autonomy) within the uniform power system in connection with the constitution court. "The system of the unity of power," he writes, "which is determined, according to the Marxist theory of power, and which has been accepted as a basic political principle in every socialist country, means in our view first of all the responsibility of the executive-administrative organs to their representative body, and the duty of the representative organs to control the application of the laws by the administrative organs. But a standpoint according to which there should be no room in this system for independent and directly responsible organs, can by no means be justified."<sup>172</sup> Krivic, in another passage, indicates that the constitutions of 1946 and 1953 did not provide sufficient and efficient safeguards for the protection of constitutionality, which is of great importance under the circumstances

<sup>168</sup> Djordjević, J.: "Les cours constitutionnelles en Yougoslavie," *Le Nouveau Droit Yougoslave*, Beograd, 1963, October–December, pp. 9–24.

<sup>169</sup> Ibid. pp. 9–10.

<sup>170</sup> Ibid. pp. 20–21.

<sup>171</sup> Introduction by Vladimir Krivic to the volume entitled "Les juridictions constitutionnelles," *Recueil des lois de la RSF de Yougoslavie*, Volume XIV, Beograd, 1965, pp. 3–15.

<sup>172</sup> Ibid. p. 6.

of a federal state. He considers the arranging, harmonizing effect of the constitution court still more important under the circumstances of social self-management. "The large number of organizations, the autonomy of self-management labour-organizations and villages, the very wide powers to adopt normative decisions, etc., all this calls for a social organ which makes impossible any bureaucratic interference with the matters of self-managing organs, from above as well as any 'horizontal' abuse among autonomous organizations and organs which have the right to issue regulations and whose number has increased considerably in recent years."<sup>173</sup> Krivic emphasizes, however, that the protection of constitutionality is not the exclusive right of the constitutional courts: other courts, other state organs and the self-administrative organs of the society also co-operate in this if they exercise public or other social functions.

These two theories point out the independence of constitution courts, their independence of the representative organs giving expression to the people's sovereignty, and even their independence of the *skupština* creating them. Djordjević sees the subjection to sovereignty in the subordination to the constitution, Krivic in the independence within the system of the unity of power. Both standpoints, in their final conclusion, reject any subordination to the representative organs.

Let us now consider the known forms of the control of constitutionality in the socialist countries. These forms greatly differ from one another, partly because of the differences of opinion about the primacy of the representative organs, and partly because of the attempts which were realized in the last decade.

The most conservative view disregards the separated problem of constitutionality, and looks for the solution simply in the general methods of the protection of legality. General supervision by the procurators' office tries to extend its investigations to the questions of constitutionality in this case. The clear advantage of this method is that the organs experienced in such tasks react more readily to the violation of the law, including the constitution, than those with less professional knowledge. The disadvantage of it is that the investigation field of the procurators' organization is limited, that its supervisory rights do not cover in most socialist countries the presidential organ, the government, let alone the supreme organ of popular representation. The procurator cannot but indicate the violation of law or constitution by the act of lodging a complaint, or otherwise. This form renders no assistance to the protection of the constitutionality of legislation.

The next variant is contained in Article 53, amended in 1975, of the Rumanian Constitution. Accordingly, the constitutional and legal com-

<sup>173</sup> Ibid. p. 4.

mittee of the supreme organ of popular representation, the Grand National Assembly, plays an important role in the supervision of constitutionality. Not only representatives, but also other experts are eligible to this committee, but the number of the latter must not exceed one third of the total. According to Article 21 of the working rules of the Grand National Assembly, the committee examines the constitutionality of the acts, the law-decrees and the decisions of the Council of Ministers, and makes its suggestions to the Grand National Assembly or the Council of State or the Council of Ministers. The constitutional committee is not authorized to decide about the constitutionality of laws, for, according to Paragraph 14 of Article 43 of the Constitution this is reserved exclusively for the Grand National Assembly. The Constitution thus emphasizes the priority of the Assembly, and the constitutional committee is the preparatory organ of the supervision of constitutionality; this is, at any rate, an interesting attempt at the supervision of the constitutionality of the laws.

This experiment has been carried through in two directions in the GDR. The former Constitution created a so-called constitution committee, with representation proportional to parliamentary factions. Three members of the Supreme Court and three professors of constitutional law co-operated in addition, (who were not necessarily members of the People's Chamber). The constitution committee could start investigations into the violation of the constitution by a law of the GDR upon a motion of the People's Chamber (not less than one-third of the members), the Presidium of the Chamber, the Council of State, and the government. The committee made a proposition to the People's Chamber, the Chamber passed decision on it, and this was obligatory for everybody. The People's Chamber had authority to investigate the constitutionality of the acts of other organs and of the government as well. (Article 89 of the former Constitution prohibited the judicial review of the constitutionality of laws).

The constitution of 1968 of the GDR introduced a new construction. The preliminary control of constitutionality became the task of the Council of State. "When preparing the sessions of the People's Chamber, the Council of State discusses the bills and examines their constitutionality" (former Paragraph /2/ of Article 65 of the constitution). This provision was annulled by the amendment of 1974. The Council of State continues to co-operate in the field of constitutionality. According to Article 74 of the constitution, "based on the authorization by the People's Chamber, the Council of State exercises continuous control over the constitutionality and legality of the activities of the Supreme Court and the Procurator-General." So we can say that certain branches of constitutional supervision were assigned to the presidential organ (but were reduced in the meanwhile).

The Yugoslav model of the protection of constitution is based on the administration of justice. Both the federation and the republics have their constitution courts. The federal court decides whether the laws agree with the constitution, whether a given statute of a republic agrees with the federal statutes, whether other provisions of the social-political communities agree with the constitution of Yugoslavia, with federal laws, or other federal rules; it decides legal disputes between the federation and the republic, between the republics, and lawsuits on rights and duties between other social-political communities belonging to different republics; it decides jurisdictional disputes between courts and federal organs, between courts in the various republics and other state organs. It is possible under the constitution to assign other cases to the jurisdiction of the federal constitution court.

The number of the members in the Constitutional Courts is different; the federal court is made up of a chairman and 13 members.

Investigation into the constitutionality (legality) can be initiated at the federal constitution court by the following organs: the *Skupshtina* of the Socialist Federal Republic of Yugoslavia, the republican and provincial *skupshtinas*, the representative body of other social-political communities, the Presidium of the Socialist Federal Republic of Yugoslavia, the presidium of a republic and autonomous province, the Federal Executive Council, the executive councils of the republics and the provinces (except for laws passed by the *skupshtinas*), the Constitution Courts of the republics and provinces (if the question was raised at court), the procurator of the federation, the republics and provinces (if the question was raised within its own activity), the self-administrative social right-protectors, the organizations of associated work, local communities, self-administrative communities, secretaries and other specified officials of the federation, the republics and provinces, organs defined in other provisions of the law, and the Social Accounting Service.

If the Constitutional Court states that a federal law does not conform to the Federal Constitution, the respective house of representatives must harmonize that law with the Constitution within 6 months from the publication of the court ruling. If it fails to do so, the statutory provision in questions shall cease to be valid.

An important right of the Federal Constitution court is to express opinion to the *Skupshtina* of the Federal Republic of Yugoslavia, whether a given constitution of a republic or a province agrees with the constitution of Yugoslavia.

As is seen, the Yugoslav system has produced a model of its own. That the traces of the priority of the supreme representative organs have been preserved in it is proved by the fact that the courts do not have the right of annulment if the laws violate the constitution. The right to amend the



statute is reserved for the *skupshtinas*. But it is the standpoint of the constitution court that prevails in the last analysis. The *skupshtinas* of the federation, the republics and provinces cannot prevent the taking effect of the ruling of the Constitutional Court.

(It should be mentioned here that the Constitution of 1968 in Czechoslovakia—mainly as a result of the federative structure—ordered the establishment of a constitution court. Detailed rules of jurisdiction and procedure were laid down in this law, but neither the federal, nor the two republican courts came into being.)

The problem of supervising constitutionality is therefore an open question of socialist political science. It appears from the experiments that this problem cannot be shelved, that it must be solved in the new constitutions. It is also clear that the various forms of solution raise a fundamental question of the model: the question of the position of the supreme organ of popular representation, of socialist parliament, of the primacy or equality of rank at the highest level of state power, of unidirectional subordination, of the interaction of mutual spheres of jurisdiction. All this shows that *this branch of supervision holds a specific key position in the model*, and that from the form of solution one can infer the theoretical considerations which determine the state-organizational model. For the sake of being realistic I must mention that today the majority of socialist constitutions are not concerned with the problem of protecting constitutionality; in Hungary, too, only theoretical debates were going on about this branch of supervision.

### 3. The Procurators' Organization

When dealing with this section of the model of state organization, we must, in an unusual way, discuss two mechanisms, both engaged in the protection of a sector of legality, because the supervisory system and procedure is, or may be, separated. Quite clearly, a question of law and legality is involved in the control of constitutionality: guaranteeing the observance of the fundamental law. But separation is inevitable because an external organ (usually the procurator) is engaged in the protection of legality in all socialist countries within strictly defined limits. This limitation is effective mainly vertically and affects the supervision of legality in framing the constitution, i.e. the most sensitive point. But the supervision of legality is by no means disturbed by this limitation, since the organs themselves not to be covered by this supervision issue the statutes whose observance they control. Control of legality in its present form does not raise the very difficult questions of model which were raised by the aforesaid procedures of the supervision of constitutionality.

But even if the organization of the procurators is not so problematic, this does not involve the conclusion that this organization was readily accepted by everybody from the outset and could be incorporated without difficulty in the organization of the socialist state. This incorporation in the organization of the socialist state is instructive in two respects: first, it shows how the qualified state apparatus assumes the role of the lay element in professional questions at a given stage of the consolidation of state power; second, it shows that the operation of certain principles of building the state can be reasonably restricted whenever these principles prove to be too rigid (as the principle of dual subordination in this case).

Concerning the evolutionary history of the procurators' organization, one must keep in mind that an institution called "supervision by the procurator" (*prokurorsky nadzor*) had been operating for almost two centuries in pre-revolutionary Russia. It is a known fact that this institution had longer traditions in Europe than the public authority of prosecution which ensured the influence of the administration in the administration of justice. Since this organ was a politically not insignificant organ of the bourgeois state apparatus, "the earlier institutions of judicial investigation, and prosecution" were abolished by item 3 of the first decree on the courts (dated December 15, 1917), and the same item made it possible for any citizen of full rights to act as accuser (or for the defence) in proceedings. Thus this provision replaced the old supervision by the prosecution by an institution of lay indictment.

It is typical, however, that in 1922 the Bolshevik party showed increasing interest in legal questions, especially in questions of legality, evidently for strengthening the Soviet state and under the effect of the new economic policy. Let me quote Lenin's letter of February 28, 1922, dealing with the work on the civil code, written to Kursky: "Everything that the literature and experience of the West-European countries contain on the *protection* of the working people must be used [ . . . ]. We must not . . . let slip out of our hands the slightest possibility of *extending* state interference in 'civil' relations."<sup>174</sup> His famous and already cited letter—still more important for our purpose—is a significant summary of legal protection; it had been written in connection with the preparation of an important statute (on the supervision by the procurators), on "*dual*" *subordination and legality*.

This letter raises legal problems as professional problems and demands to employ specialists, i.e. legal experts for their solution. Lenin linked the requirement of trustworthiness with legal qualification. "Scarcely anyone will dare deny that it is easier for the Party to find half a score of reliable Communists who possess and adequate legal education and are capable of

<sup>174</sup> Lenin, V. I.: *Collected Works*, Vol. 33, Moscow, 1974, p. 203.

resisting all purely local influences than to find hundreds of them," he wrote.<sup>175</sup>

Another important question of building the state was debated in this connection in the subcommittee of the All-Russian Central Executive Committee whose majority was against the subordination of the procurators' local representatives of supervision solely to the centre. This majority insisted on dual subordination, saying that the protection of this dual subordination is a part of the fight against bureaucratic centralism, in the interest of the necessary independence of local authorities. In this case Lenin, who, as a matter of fact, defended the principle of dual subordination several times, with the aim of creating a well-balanced state hierarchy defined the purpose of dual subordination and its limits as well: "Dual subordination is needed where it is necessary to allow for a really inevitable difference. [...] The same thing... can be said about administration, or management, as a whole. Failure to make allowances for local differences in all these matters would mean slipping into the bureaucratic centralism, and so forth. It would mean preventing the local authorities from giving proper consideration to specific local features, which is the basis of all rational administration. Nevertheless, the law must be uniform..."<sup>176</sup> Then he sums up his conclusions as follows: "To sum up, I draw the conclusion that to defend the 'dual' subordination of procurators, and to deprive them of the right to challenge any decision passed by the local authorities, is not only wrong in principle, not only hinders our fundamental task of constantly introducing respect for the law, but is also an expression of the interests and prejudices of local bureaucrats and local influences, i.e. the most pernicious wall that stands between the working people and the local and central Soviet authorities, as well as the central authority of the Russian Communist Party."<sup>177</sup>

This is a most instructive train of thoughts even if we consider the inevitably greater demand for centralization at that time. It is only natural that a higher degree of centralization was a sound reaction after a period in which the fight for central power meant the end of the civil war, of intervention. If we take all this into account, we must notice that the said demand is not only connected with a given case or with that given era. The establishment of the organization of the procurators was an *opportunity* to set forth this principle in a more exact manner than earlier. And as concerns the statutory provision on the procurators' organization and its powers, this was enacted in accordance with Lenin's standpoint in May 1922 as the statute of the All-Russian Central Executive Committee.

<sup>175</sup> Ibid. pp. 365–366.

<sup>176</sup> Ibid. p. 364.

<sup>177</sup> Ibid. p. 367.

The procurators' office was established within the organization of the People's Commissariat of Justice, and was headed by the Commissar of Justice in the capacity of the procurator of the republic. The procurator of the provinces and *oblasts* appointed by him were acting in direct subordination to him. All procurators had deputies who assisted them in their work. The procurators were under obligation to report to the procurators of the republic and to the executive committees of the provinces on their activities and on the work of their deputies every three months.

It was here that the first solid scheme of the procurators' organization was created—doubtless on the basis of attempts at centralization. This provision departed from the course which was typical of the former organs of prosecution; item 2 of Paragraph /a/ defines the task of the procurator as "supervision exercised in the name of the State", "... over the legality of the activities of all power organs, economic institutions, social and private organs and private persons". The role of the procurator continued in criminal proceedings, and even grew broader to a certain extent.

These are the beginnings of the operations of the socialist procurators' office as the organ of the supervision of legality. If I try to define the tendency of development between the early 1920s and our days, I might say that, apart from the expansion of a few spheres of authority, this is practically static. But, as we shall see, in the last decade special emphasis was laid on the expansion of general supervision of the procurators.

Studying the present situation we may say that the procurators' office is perhaps the organization where we see the smallest difference between the various socialist countries, at least on the constitutional level. But here we must look again behind the skeleton rules of the constitutions, for there we find a few important problems concerning the sphere of authority and the trend of operation of the whole organization.

The first step in the new evolution of the procurators' organization was the Soviet Constitution of 1936. The system of that is characterized by the fact that Chapter IX discusses the institutions of both the judiciary and the procurators but separated from each other. Here we find three fundamental provisions: (a) Article 113 according to which the "supreme supervisory power over the strict execution of the laws by all People's Commissariats and institutions subordinate to them, as well as by public servants and by the citizens of the USSR is vested in the procurator of the USSR"; (b) the Procurator of the Soviet Union is appointed by the Supreme Soviet for seven years, the other procurators by the Procurator of the Soviet Union and by the procurators of the republics for five years with confirmation by the Procurators of the Soviet Union; (c) Article 117, according to which "the organs of the Procurator's Office perform their

function independently of any local organs whatsoever, being subordinate solely to the Procurator of the USSR". I would like to point out from Article 113 which spoke in clear-cut terms of the supervision of legality in state administration, that it said nothing at all about such supervision in the field of the administration of justice. (There has been a change since 1936, because the procurators' organization now is headed by the Procurator-General.)

Later European socialist constitutions defined the purpose of the supervision of legality in more general terms, and, consequently, in a more varied form. The Hungarian Constitution which in its original 1949 text is clearer regarding its structure for it discusses the judiciary and the Prosecutor's Office in two separate chapters divided the sphere of tasks of the procurators' office and the Chief Prosecutor into three parts in Article 42. First it declared that the general duty of the Chief Prosecutor is to watch the "observance of legality". A part of this is general supervision of legality in order that "the ministries, the public authorities subordinate to them, the offices, institutions and other organs, the local organs of state power, as well as citizens abide by the law", the other is the authority of the procurator in criminal cases ("that all acts violating or endangering the order, security and independence of the Hungarian People's Republic must be consistently prosecuted"). The central structure and organization of the prosecution is provided for in Article 43: the Chief Prosecutor is elected by Parliament for a term of 6 years (with the right to recall him), and the other prosecutors are appointed by the Chief Prosecutor for an indefinite term. This Constitution declared the prosecutors' independence of administrative organs and of local organs of state authority (so this is general independence, not only a local one).

This pattern was changed by the amendment of the Constitution in 1972. The order of duties was altered, and the weight of the supervisory branches newly formulated (Paragraph 1 of Article 51). "The Chief Prosecutor and the Prosecutor's Office are responsible for the consistent prosecution of every act violating or endangering the legal order of society, or the security and independence of the State, and ensure the protection of the rights of the citizens." The function of criminal prosecution was placed first; supervision over the legality of criminal investigation, acting as public prosecutor was placed second; and the co-operation for ensuring that "state, social and co-operative organs, as well as citizens observe the laws and make them observed" (general supervision) was placed third. The Chief Prosecutor is elected by parliament for 4 years, the other prosecutors are appointed by the Chief Prosecutor for an indefinite term (i.e. without a time-limit). The organization is characterized by strict centralization. It must be mentioned, too, that the Constitution and Act V of 1972 on the Prosecutor's

Office entrusted not only the Prosecutor's Office with the supervision of legality. The preamble to the bill emphasized that the "observance of legality is the duty of all state organs"; indeed, statutes laid the duty of special legality supervision on a large number of state organs. Thus the procurators' office became, pursuant to the constitution and the law, the specialized organ of the supervision of legality.

Article 54 of the Polish Constitution emphasizes the obligation of supervision by the procurators in order to protect social property and the *rights of the citizens*. Accordingly, the Procurator-General "protects people's legality, social property, ensures that the rights of citizens are respected" and "watches vigilantly over the prosecution of crimes that endanger the order, security and independence of the Polish People's Republic". General supervision and the function in criminal matters are separated here too. The appointment and recall of the Procurator-General was not assigned to the supreme representative organ by the constitution, but to the collective presidential organ, to the Council of State. (The internal organization is not laid down in detail in the constitution, it was regulated in the Procurator's Office Act of 1967.) Similarly to the Soviet Constitution of 1936, the independence of the procurators is declared only in respect of local organs.

The Polish act on the Procurator's Office defines the tasks of this organization as follows: watching over popular legality, the prosecution of criminal acts, the protection of social property, the respect for the rights of citizens. The procurator sees that the regional organs of administration, state enterprises and other agencies act in accordance with the legal norms.

In Article 144 of the Korean Constitution of 1972, the former general right of supervision of the procurators' organization has been extended. According to this Article, the procurators' organization supervise whether the laws of the state are exactly observed by the state organs, the enterprises, the social and co-operative organizations and by the citizens. Apart from this, they are also obliged to observe "whether the resolutions and decrees of state organs are in accordance with the Constitution" and with the legal norms issued by other central organs. Finally, the Procurator's Office has the function of criminal investigation. The president of the Central Procurators' Office is appointed by the Supreme People's Assembly. The procurators are appointed by the Central Procurator's Office. The Central Procurator's Office is responsible for its work not only to the Supreme People's Assembly, but also to the President of the Republic and to the Central People's Committee (the central directing organ).

The Chinese Constitution of 1978 has maintained the organization of people's procurators. The local organizations of people's procurators are

not independent of the local organs, because according to Paragraph 3 of Article 43 of the Constitution "they are responsible, and must render account, to the corresponding local people's assemblies". Concerning the tasks of the procurators, Article 43 of the Constitution only states that it is to supervise whether the constitution and the laws are observed by the organs under the authority of the Council of State, by the local state organs of various levels, by the workers of the state organs and by the citizens. Thus, this formulation did not go beyond the Soviet model.

The Mongolian Constitution contains no substantially new element. The Procurator-General is appointed by the Great People's Hural for 3 years. The independence of the procurator's office is expressed by the Constitution in that "in attending to their duties, the local procurators are subordinate only to the superior procurator". In Article 72 the tasks of the procurator's office are defined basically in the same way as in the Soviet Constitution of 1936.

Article 104 of the Czechoslovak Constitution of 1960 did not separate the branches of supervision, but enumerated the organs the activity of which is supervised by the procurators from the point of view of legality (the judiciary was included in this enumeration expressly for the first time). The enumeration is the following: the ministries and other organs of state administration, the national committees, the courts, the economic and other organizations, and the citizens. The Procurator-General is appointed by the President of the Republic. Article 106 separately declares the independence of the procurators of local national committees.

Article 112 of the Rumanian Constitution laid down a new order for the branches of supervision: supervision of the agencies of crime control and of penal institutions is enumerated first; this is followed by the duty to attend to the observance of legality, to protect the socialist order of the society, the rights and lawful interests of socialist organizations, other legal persons and citizens. The Procurator-General is elected in the first session of the Grand National Assembly for the duration of the legislative term. The procurators of the countries are elected by the people's councils of the counties for their term of mandate, upon recommendation by the Procurator-General (item /e/ of Article 16, Act 57 of 1968).

The institution of the procurators is dealt with in Articles 97 and 98 of the Constitution of the GDR. The Procurator-General is elected by the People's Chamber (Article 50), the other procurators are appointed by the Procurator-General and may be recalled by him; his instructions are obligatory for them. Concerning the powers of the procurators, the Constitution declares: "For protecting the socialist order of the state and society and the rights of the citizens, the procurators' organization watches over the strict observance of socialist legality on the basis of the

laws and other statutes of the GDR. It protects the citizens against the violations of the law. The procurators' office directs the fight against crime, and ensures that persons committing felonies or misdemeanour are called to account in court."

The procurator's organization is mentioned in the Cuban Constitution in Chapter X. The procurators' organization has the right and the duty to maintain legality. The Procurator-General is elected by the National Assembly of People's Power (Articles 130-133).

The Yugoslav Federal Constitution of 1974 says that the prosecutors' office is an independent state organ engaged in the prosecution of the perpetrators of crimes and other punishable acts defined by law, and it takes measures defined by law for protecting the interests of the community, and resorts to legal remedies for protecting constitutionality and legality. Thus emphasis is laid here on two directions of supervision: (a) prosecution of crime, and (b) general supervision of legality. This shows that the Yugoslav model has changed in recent years. The Federal Public Prosecutor is appointed and discharged by the *Skupshтина* of the Socialist Federal Republic of Yugoslavia. The direction of the procurators' office is rather centralized also in the Yugoslav model.

In the Albanian Constitution of 1976, the general supervision of legality and the supervision of constitutionality are the tasks of the procurators' organization (Articles 104-105). The Chief Procurator is appointed by the People's Assembly, the other procurators are appointed by its Presidium.

Article 164 of the Soviet Constitution of 1977 enumerates those organs and persons whose activities are observed from the aspect of legality by the procurators' organization. These are the following: the ministries, the state committees, chief directorates, enterprises, institutes, organizations, the executive and disposing organs of the local Soviets of People's Deputies, the kolkhozes, co-operative and other social organizations, officials and citizens. The Procurator-General is appointed by the Supreme Soviet. The appointment of the other procurators is partly the right of the chief procurator and partly that of the procurators' organizations of the Union Republics. Appointments last for five years. The procurators perform their work subordinate only to the chief Procurator-General and they are independent of all local organs.

It appears from all this that the models of the organizations of the procurators' office in the socialist countries have come nearer to one another in the recent years. Certain differences still remain: (a) the difference of aims, i.e. the emphasis on the general supervision of the legality of administration, or emphasis on the role in criminal proceedings; (b) the interpretation of the independence of the procurators' organization: independence only of local organs, or of the administration as a



whole; (c) the Procurator-General's relations of subordination: limited term of mandate, or election and appointment for indefinite terms.

But all that cannot be seen exactly enough owing to the skeleton-like regulation in the constitutions is quite clearly manifest from detailed statutes and the comments made on them. On this basis I feel that there are two problems in the evolution of the procurators' organization. The first and most important of these is the scope of supervision, i.e. what is covered by the procurators' supervision, in what direction supervision must be maintained or developed further.

We are confronted by two principles and traditions here. One was consistently realized in the Soviet Union where the ideological emphasis was laid on the general supervision of legality; though this supervision and activity of the procurators was not reduced in other fields either. The realization of the other standpoint is seen in the GDR where the participation in judicial proceedings is in the centre, and only the first steps have been taken for developing general, administrative supervision. Before discussing the two ways of evolution, I must stress that the expediency of these two models is intensely debated, not in the literature, but rather in everyday discussions about working methods. This has become especially vivid since the recourse to the judiciary was opened up in several socialist countries for averting the violations of the law in administrative procedures. This question, together with that of the necessity to maintain functions of the procurators, must be re-examined later.

In 1955, the Presidium of the Supreme Soviet issued a regulation on the supervision by the procurators' office. The Soviet procurators' office works in four branches. The first to be mentioned is general supervision which ensures that the acts issued by the ministries, public authorities, institutions and enterprises subordinate to them, by the executive-directive organs of the local Soviets, by co-operative and other social organs are in strict agreement with the Constitution and the laws of Union and Autonomous Republics, with the decrees of the Council of Ministers of the Soviet Union, of the Federal and Autonomous Republics, and that official persons and citizens observe the laws precisely. The second branch is supervision over the legality of criminal investigation, that means protecting the legality of the activities performed by investigating and inquiring organs. In the course of judicial supervision, the procurator watches over the legality of court decisions and over their sound foundations; he takes part in court trials for this purpose, and supervises the enforcement of court decisions. For protecting the legality of the execution of punishments, the procurator ascertains that persons are kept in detention centres only on the basis of court decisions or with the approval of the procurator, and that the legal rules of detention are

observed. Appropriate legal means are available to the procurator for exercising supervision (protest, proposal); he has the right to initiate penal, disciplinary, administrative or civil proceedings against infringers.

The legal regulation of the activity of the procurators' office in the GDR has always been different. Chapter III of a law decree of 1963 on the fundamental tasks and working methods of the judicial organs which discusses the tasks and fundamental organizational questions of the procurators' office, makes available the fewest legal means of the five branches to the procurators for performing general supervision. In fact, this cannot be regarded as a separate supervisory branch in this field. Namely, item 2 in Part II/E of Chapter III does not create a direct supervisory system, but puts the procurator under the obligation to lodge protest or take other measures if "he ascertains the violation of law in the procedure of criminal investigation, in judicial proceedings, at the adjustment of released convicts to community life, in dealing with petitions received from citizens, or during other analytical activity." This means that the procurator can detect the violation of the law in the field of the national economy, socialist property, research and technical development, and the protection of the citizens' rights and lawful interests only in the course of the above-mentioned activities. In such cases the procurator may request the head of the organ concerned (or an other organ) to hold inspection or inquiry, to present files, documents. On the other hand, the same law decree provided for an altogether independent supervision by the procurators' office in criminal investigations, judicial proceedings, preliminary detention, the execution of punishment and keeping criminal records. The analysis of crime and of the fight against it is a special task of the procurators' organization. Debates on the necessity of general supervision have been going on in the legal literature of the GDR for many years. The Act of 1963 on procurators itself only spoke of the "unlabelled" protection of socialist legality as a contingency where the supervision of the administration is connected with other forms of crime control.

The disputes about the supervision by the procurators arise in two respects: first, whether the operations of this organization should not be restricted again to criminal investigations, inquiries, public prosecution, to acts connected with court proceedings; on the other hand, the general justification of the present-day procurators' organization is discussed as well. In the first case, general (mostly administrative) supervision of legality is held unnecessary, especially in view of the judicial recourse which has been admitted, or is regarded as necessary. Hungarian experience shows that even where judicial protection against administrative acts is available, the number of the violations of the law disclosed by the procurators is considerably higher than the number of lawsuits. It is

evident from this that the organs of the state may not render the prosecution of violations dependent on the circumstance whether private persons put up with these violations. As a matter of fact, I have already indicated the sociological reason for maintaining general supervision.

Those in control of the present form of the procurators' organization usually fail to consider the possibilities which would be available to the socialist state in addition to the former system of public prosecution. The activity of the procurators in Hungary shows that the comprehensive organizations of the protection of legality as an external control organ is just as necessary as the external control apparatus of expediency inquiries. It was not by chance that Lenin often mentioned the low standards in the culture of official work as the absence of a uniform legal consciousness. It is exactly this low standard of culture that can, and must, be abolished in a socialist state.

In most socialist countries, the procurators' organization in its developed form is a suitable means for ensuring legality, in addition to other institutions serving the protection of the legal framework. Among others, supervision by the procurators prevents other organs of state administration and the administration of justice from assuming a monopolistic position which may also lead to violations of law.

#### **4. State Control, People's Control and Parliamentary Control**

Having considered the constitutional, and, in some cases, the extra-constitutional organs of the supervision of legality (and constitutionality), we have to examine the organizations which are engaged in the supervision of expediency conditions within the state organization. This "expediency" may be varied: it may involve appropriate economic measures just as effective organization, fight against bureaucratic management, etc. Undoubtedly, it is very difficult to separate the problems of legality and rationality in the course of control, since efficient economic measures cannot be taken without paying regard to the legal basis. This is the reason why economic judicature has procedural rules that differ from those of regular courts; with the aid of these rather liberal rules the economic courts can take into account the aspects of economic expediency which are unlikely to be considered by regular courts, considering their necessarily rigid rules of procedure. It is obvious that the organs for control of expediency cannot conduct one-sided inquiries either, for it is their minimum duty to indicate the violations of the law detected by them to the proper organs of the supervision of legality or other superordinate state organs.

The problem of control in socialist states was connected first with the introduction of a close supervision and later, with the nationalization of the capitalist enterprises. Before the nationalizations actually took place, it was tried practically everywhere to ensure the continuity of production and the protection of national property. Better working conditions and the protection of general national economic interests were aims to be achieved through granting the right to have a say and the exercise of control to the workers. The forms were varied, and all kinds of solution—ranging from the initial self-administrative organs of the workers, from their workshop committees to the trade union organs—were known in the different countries in that period. The rights of the workers were similarly different, but especially the first period was characterized by the fact that a sort of “dual” power was established in the productive and other units for neutralizing the manipulations of the capitalists. Control had not yet “state” nature at that time, although the new state power supported these organs legally and officially. Their central organizations were set up in certain countries as an experiment to develop a uniform attitude.

The most typical of the organs of initial control was the *workers' control* created, that is to say, reinforced on November 29, 1917, by the regulations of the All-Russian Central Executive Committee. This regulation says: “in order to regulate systematically, the people's economy, the workers' control relating to production, to the marketing, sale and storing of produced goods, and to finances, is hereby introduced in all industrial, commercial, banking, agricultural, transport and co-operative joint stock companies and other plants which employ workers of their own or people working at home” (Article 1). This function was actually performed by the factory workshop committees and other elected representative organs. The local Soviet of the workers' control had to be set up in every major town, in the provinces and districts of industrial nature; these Soviets were made up of the representatives of the trade union, factory, workshop and co-operative committees. The regulation ordered the establishment of the All-Russian Soviet of the Workers' control in Petrograd as the central organization. (The composition was characteristic: the All-Russian Central Executive Committee of the Soviets of the workers' and soldiers' deputies was represented by 5 members; the All-Russian Central Executive Committee of the peasants' deputies by 5; the All-Russian Council of the Trade Union Association by 5; the Council of Workers' Co-operatives by 2; the Bureau of Factory Workshop Committees by 5; the Association of Engineers and Technicians by 5; the Association of Agronomists by 2; each workers' association with less than 100,000 members by 1; each such association with more than 100,000 members by 2; and the Petrograd Council of Trade Unions by 2 members.) The committees of inspectors and experts (technicians, accountants, etc.) were set up for making the control

efficient. The decisions of the organs of workers' control were compulsory for the owners of the enterprises, and could be set aside only by the higher organs of workers' control. The owners and the elected workers' representatives were responsible to the state for work discipline and for the security of property. We may conclude therefore that this initial organization—which operated only for a few months—showed the essential features which were also later on effective, in the control organization: (a) people taking part in the production directly were drawn into the control in large numbers; (b) the higher and central organs of control were created simultaneously for guaranteeing uniformity and expertise of control.

A variety of experiments were conducted in Soviet Russia and afterwards in the Soviet Union for finding a rational solution of the control of expediency. The phase when in 1920—following the earlier Central Control Committee, then, the People's Commissariat of state control—the Worker-Peasant Inspectorates (*Rabkrin*) were created, and were reorganized in 1923 according to the ideas of Lenin seem to be the most interesting to us. This latter reorganization is an important model because it was the merger of a state organ with a party organ. The Worker-Peasant Inspectorate worked as a state organ, as a People's Commissariat from 1920, the Central Control Commission as a party organ from 1921. Why were these organs merged between 1923 and 1934 for the first time? (Similar mergers were carried through later in the Soviet Union as well as in other socialist countries, at least in a temporary form.) First of all because in the mechanism of the Soviet society and state it is self-evident that the interest of the politically most conscious social leading force, the Marxist-Leninist party in the operation of the state organization is the real control of the activities of the apparatus, and of the implementation of political decisions by the state. This control may be exercised in two forms: (a) organs of the party and the state act independent of each other, but rely on each other; in this case a multi-grade control is the result in which "supercontrol" is in the hands of the party; (b) the same system can be unified, but in this case directive-supervisory control is exercised over this organization—even formally—not only by the superior administrative organization (the national administrative body of general authority), but also by the respective party organ (the Central Committee). Yet control by the party is not simply the operation of the inevitable automatism of a political mechanism, it is the movement of a highly conscious social force outside the state apparatus. This contributes to the absorption of newer and newer social forces by state activity. Since the party has very clear, conscious, long-term social objectives and exact plans, one or another form of party control entails the confrontation of state organs with the objectives of society. This way of party control is just as indispensable under the circumstances of a

socialist society as the control of pressure groups or other civil community organizations in the capitalist countries, unless the demand that the various branches of the state apparatus follow the aims of the ruling class is given up in that country.

Thus party control is inevitably present in some form or another in the socialist countries. In 1923, at the 12th congress of the RCP (of Bolsheviks), the political situation, the tasks of the state, were assessed to the effect that the tasks of control can be accomplished in a concentrated manner, with the joining of all forces of the society and the state, if the forces available act in one direction. In his proposal sent to the 12th congress, Lenin<sup>178</sup> demanded the election of further 75–100 workers and peasants to the Central Control Commission in order to strengthen the party line in the united organ. At the same time he recommended to reduce the former number of controllers so that only the specialists with truly suitable expertise should be left. In another article, published in Pravda, Lenin raised the question whether it is not improper to merge party institutions with Soviet (state) institutions. He thought that if it promotes the cause there is no obstacle to such a merger. In an interesting way, he mentioned that such “merger” has already taken place in the People’s Commissariat for Foreign Affairs because innumerable questions of foreign policy, important also from the party’s point of view, were also discussed in the Political Bureau. (But this was actually not a case of merger, it was a kind of further division of functions.) According to Lenin, the cause of control is supported by the fact that the prestige of the Central Control Commission alone may help the united control organ. The following requirements had to be met by its officials: recommendation by several communists, considerable scientific expertise in the field of the state apparatus, administrative management, and the officials “must work in such close harmony with the members of the Central Control Commission and with their own secretariat that we could vouch for the work of the whole apparatus”.<sup>179</sup>

The essence of Lenin’s plan was that the party organs must have considerable influence on the state apparatus—even with the method of merger, if this is necessary and useful—also in the field of supervision among others. The contact between the two types of control depends first of all on what actual relationship developed in the division of labour between the organs of the party and the state as a result of the leading role of the party. (It is highly instructive that in 1962 the organs of party and state control were created anew in the Soviet Union. But they ceased to exist in this form after three years of operation, and were replaced by the

<sup>178</sup>Ibid. p. 482. (*How we should reorganise the Workers' and Peasants' Inspection*)

<sup>179</sup>Ibid. p. 491. (*Better few, but better*)

organs of the people's control. All this shows that—although the influence of the party organs grew in the various fields of state work in the Soviet Union at that time—the merger of these organs was not as profitable as in 1923.)

After the abolition of the *Rabkrin* in 1934, the organs of control were transformed into a typically centralized, extensive administrative organization made up of experts. They were called subsequently in the Soviet Union as follows: Soviet Control Commission subordinate to the Council of People's Commissars (from 1934); People's Commissariat of State Control (from 1940); Soviet Control Commission working co-ordinated to the Council of Ministers (from 1957) which was transformed into an organ of the Union Republics in 1961. At present the organ of control is the Committee of People's Control of the Soviet Union which was established by the Supreme Soviet of the Soviet Union but is directed by the Council of Ministers. Its president is member of the Council of Ministers of the Soviet Union.

Behind this multitude of names there is the question of what organizational system of subordination and function should be shaped for the external supervisory organs controlling expediency in a socialist state. The experiments made so far present three possibilities of organizational form:

(a) An organ of administrative subordination which in its hierarchical relations corresponds to the *forms of the general administrative organization*. Using a generalized term, I call this form state control. In this case subordination points towards the organ of general powers at the head of the administrative organization, i.e. the government. Hierarchy is usually expressed by the circumstance that the principal policy of control is approved of by the government; the control organization renders assistance to the direction of administration, and reports to the council of ministers on its general activities and results of specific inquiry. Such an organization is made up of permanent experts who are on the staff of the control apparatus.

(b) The second form is the organization of *mixed (state and social) control*. In this case, only a part of the control organizations belongs to the state apparatus, the other part is made up of voluntary (social) workers (who do not work in the control organization as their main workplace). This mixed form of control may have two further forms of solution: the aforesaid state control and party control when the apparatus itself becomes joint (its subordination, too, is dual because it is subordinate on the one hand to the administrative organization, namely, to the government and on the other to the highest elected organ of the Party); it draws the network of activists from two sources, but it is the activists of the Party that participate for the most part. If it is not this form of merger

that becomes prominent, there is the possibility of what is called the *people's control*. In this case the co-operation of the party apparatus is no longer involved because a special organization of administration is emerging, which is under the committee direction of collective and social control, with a different method for selecting activists. The influence and assistance of local and regional organs of popular representation is of high importance in this case (and so is the dual subordination attached to it). The characteristics of the mixed form of control may be summed up like this: it operates, on the one hand, with working methods of the state administration, and, on the other, with social forces and a system of utility and mobilization characteristic of them. Concerning their hierarchical pattern, they show typical forms of state administration.

(c) The third system, which was introduced only in Poland, is *parliamentary-governmental control*. As a matter of fact, the idea had been raised in several socialist countries before, but it is exactly the insufficiency of information and influence of the supreme organs of state authority and popular representation, the deficiencies of their apparatus, that is felt in the control of execution, i.e. in the implementation of the legislation. The committee system of the parliament can hardly make up for the lack of an expert apparatus of its own. When the Polish model of control had taken shape, it became evident that a minute operative method of supervision is out of the question; what was involved here first of all was the control of the enforcement of the law—of the budget and the national economic plan—as well as keeping the Sejm informed if only for ensuring the well-founded drafting of statutes.

Since parliamentary-governmental control was implemented only in Poland, it may be interesting to have a look at its structure and principal working methods. The organ of parliamentary control was established with the amendment of the constitution on December 13, 1957. The position and principal rights of the Supreme Chamber of Control (*Najwyższa Izba Kontroli*) were laid down in Articles 28/a to 28/d. Articles 34 and 36 of the Constitution of 1976 contained new provisions. Accordingly, this Chamber is to control the legality, the economic benefit, the expediency and the realization of the tasks of the socio-economic plans, in relation to the activities of the central and the local state administrative organs and of the social and co-operative organs as well as the units subordinate to them. The Constitution declares that the Chamber may control social organizations and enterprises and institutions not in public ownership if the state has given them commissions and orders. The Supreme Chamber of Control is supervised by the President of the Council of Ministers. Its president is appointed and recalled by the Sejm. The Chamber works in the collegial (collective) form. Its activity helps the Sejm, the Council of State and the Council of Ministers in fulfilling their tasks.



The Supreme Chamber of Control was created in Poland at the time when the consolidation of the position of the Sejm, the ensuring of its priority, was a highly important constitutional goal. When evaluating the Supreme Chamber of that time, we must take into account this objective, and not the extent and efficiency of its control over the administration. Parliamentary—governmental control seems to be important in this respect, but can hardly replace the operation of extensive, external administrative control of mixed or state nature. The control organs in other socialist states are not suitable for supplying the supreme organ of state authority with adequate information, nor for guaranteeing the control of the enforcement of laws in such a way that would provide the supreme organ of state authority (and not the organs of administration) with sufficient assistance for correcting the deficiencies of legislation, or the imperfectness of execution.

The form of the Soviet control has been the people's control since 1960. This institution comprises the following organs: the commission of the people's control of the Soviet Union, the people's control commissions of Union and Autonomous Republics, of *krais*, *oblasts*, the people's control commissions of *okrugs*, towns and rayons, as well as the people's control groups and services working at the Soviets of the deputies of village and settlement workers, at industrial units, *kolkhozes*, enterprises, organizations and military units. The organs of the people's control work as the organs of the Council of Ministers of the Soviet Union, of the Council of Ministers of the Union and Autonomous Republics, and of the local Soviets, and are directly subordinate to them. The president of the people's control commission of the Soviet Union is elected by the session of the Supreme Soviet. The composition of the commission is determined by the Council of Ministers of the Soviet Union. The members of the people's control groups and services are elected in the sessions of the workers with open vote for two years from among the members of the Party, the trade unions, the Komsomol and other social organs. The members of the people's control groups working with the village and settlement Soviets are elected in the meetings of the citizens of settlements or in the meetings of authorized delegates.

An apparatus of branch division is working in juxtaposition to the people's control commissions. The bureaus of the commissions organize social support for the apparatus. A number of resolutions of 1965 lay the obligation on the people's control commissions to inspect incessantly the purposeful and appropriate employment of material sources and financial means, the observance of state discipline and socialist legality, the application of scientific administrative methods. Efforts were made in the organization of the people's control not to enlarge the apparatus, not to increase the number of leaders doing this job as a main occupation.

Thus the people's control in the Soviet Union differs from the earlier forms of state control in that (a) it is an organization directed by expressly collective leading bodies; (b) these leading bodies are created by the organs of popular representation in some way—or the workers shape the various forms of the activist network directly in some cases; (c) they rely in all their activities on the activist network, although they are assisted by an adequate apparatus and bureau in their special tasks. Thus the earlier party subordination of the people's control ceased in this form.<sup>180</sup> (I should like to mention that in Bulgaria, by a statute enacted in 1964, the organization of party and state control was transformed into state control.)

A further form of merging party and state control has been created in the GDR. Set up in 1948, a Central Control Commission for co-operating with the German Economic Commission, and reorganized in 1949 as the Central Commission of State Control co-operating with the Council of Ministers (subordinate to it), the entire organization was transformed into the Commission of Workers' and Peasants' Supervision. This organization is subordinate on the highest level to the Central Committee of the German Socialist Unity Party (SED) and to the Council of Ministers. Its structural pattern is this: at the summit of the organization is the Commission of Worker-Peasant Control whose inspectorates exercise control over the leading branches and other organizations of the national economy; subordinate to them operate the branch inspectorates, and under these the commissions of enterprises and institutions. In addition there is a supervisory organization built up on the basis of the territorial principle: subordinate to the Commission of Workers' and Peasants' Control are the regional inspectorates (they must render account to the regional body of deputies), and subordinate to these operate the district bodies of deputies. Subordinate to the regional inspectorates are the commissions operating in the enterprises and institutions directed by the region; subordinate to the district inspectorates are the people's control commissions of towns and villages, and the commissions of communal institutions under district direction.

The Commission of Worker-Peasant Control and its subordinate leading organs are of collective nature; they decide matters connected with the working plans, their preparation and implementation, with the evaluation of the results of control, and pass resolutions on the basis of the reports; all this is done in a collective manner. The Commission of Workers' and Peasants' Control is subordinate directly to the Central Committee of the Party and to the Council of Ministers and is under

<sup>180</sup> (Shorina, E. V.—Dorohova, G. A.—Salishcheva, N. G.—Lazarev, B. M.) Шорина, Е. В.—Дорохова, Г. А.—Салищева, Н. Г.—Лазарев, Б. М.: *Народный контроль в СССР* (The people's control in the Soviet Union), Moscow, 1967, pp. 156–190.

obligation to render account of its work directly to them. The members of the Commission are appointed by the council of ministers. It is emphasized in the German literature on constitutional law that the most important method of control is mass control, to be understood as the systematic and concentrated employment of social forces in exactly defined and described fields of the national economy.<sup>181</sup> In addition to the rights of the control organs which make exact inquiries possible (request to hand over materials, perusal of documents, etc.), they have rights of direct intervention; they may give instruction to remove obstacles hindering the implementation of decisions and plans, to eliminate deficiencies; they have the right to demand report on the carrying out of their instructions, may suspend the instructions and orders of management.

The Central Council for Economic and Social Activity Control was instituted in Rumania in 1972 as a joint organ of party and state. The following are under its control: the ministries and the other central organs of administration, local organs of administration, industrial centres, enterprises, other units of economic and social activity, and the co-operative organizations. The president, his first deputy, the secretary general and the members of the Council are appointed by the Council of State. The control council comprises party activists, leading functionaries of the ministries, representatives of trade unions, of the Women's Council, of the youth federation, managers of industrial centres and enterprises, teachers of higher education. The Central Council has county councils: the president of such a council is the secretary of the county party committee responsible for economic questions; he is at the same time recommended to be elected the deputy president of the executive committee of the people's council. Workers' control councils are active in industrial enterprises and other economic units.

The Hungarian system of people's control belongs to the third, mixed type (Act V of 1968). Party and state control was not merged in Hungary; the aim was to make control work simpler—it was formerly over-centralized and had an oversized administrative apparatus—and to extend its social basis.

The people's control commissions of various levels have a considerable *network of people's inspectors*. This social network intensifies the relations of the control organs with the working population, and also promotes expertise because outstanding experts are asked to act as controllers. Persons employed by the inspected organ or by the immediate superior organ of the latter, and/or relatives of such persons, may not take part in the inquiries.

<sup>181</sup> Hieblinger, R.—Menzel, W.: *Leistungsakte, Eingaben, Kontrolle (Staatsrecht der DDR I, Allgemeiner Teil Heft 6*, edited by Under, W. B.) Berlin, 1965, pp. 106–108.

If there is a well-founded suspicion of a criminal offence, the findings of control must be made known to the police or the procurators' office. If the control commission ascertains an offence or neglect, it must notify the organ inspected and the supervisory organ of the latter. The head of the organ inspected and the employees called to account must offer explanation to the control commission within 3 days. The members of the control commission may peruse all files, may enter all premises if this is necessary for the control. (If a minister reserves the right of delivery of documents because a state secret is involved, then the right of perusal is due to the central organ of control.) In cases defined by law, the Central People's Control Commission has the right to suspend the head of the organ inspected or its employee in case of grave neglect or the intimidation of employees.

The supreme organ of the people's control is the Central People's Control Commission under the guidance and supervision of the Council of Ministers; it is responsible for its activities to the Presidential Council of the People's Republic and to the Council of Ministers. The Central Commission is made up of a president, deputy presidents and members who are elected by the Presidential Council for a parliamentary term, and may be recalled by it. (Maximum membership of the Commission is 15–17.) The control commissions of lower degree are subordinate to the Central Commission. They are responsible for their activities to the local council electing them, and to the Central Commission. The members are elected to any regional commission for the *same term as the local council*. The people's control commission holds office until re-election. The president, deputy presidents and members of commissions may be recalled by the organs of popular representation who have elected them. Membership is terminated through resignation, revocation, or by court judgment. Lay members of the control commissions and the people's inspectors enjoy *protection under labour law*. While holding this office and one year longer their employment may be terminated by giving notice or by disciplinary decision only with the preliminary consent of the superior control commission. A bureau is working with every control commission; the workers of these bureaus may take part in the control activities.

Other specialized control organs work as well in addition to the general control organization in socialist countries. Such activity is carried out, for example, in Hungary, based on the Minister of Finance's right of economic and financial control (on the basis of the governmental decree 40/1967), or the controlling right of the National Chief Inspectorate of Trade and its organs, controlling not only state, but also other trade (on the basis of the governmental decree 10/1967).

The organs of control work in different ways in the socialist countries. Apart from their organizational pattern, subordination system and con-

crete powers, it must be stated that they are highly important and have a great influence on the other sectors of the state organization, for they are considerable counterbalancing factors mainly in the field of economic functions. With the exception of Poland, however, on the constitutional level they do not occupy a position in the state model which would be justified by their importance. It would be desirable therefore to lay down at least the principal organizational foundations and scope of tasks of the general control organs in the constitution. All this would provide the same nature of guarantee as does the constitutional regulation of the organs watching over the observance of constitutionality and legality. .

## INTERNAL PROPORTIONS AND RELATIONSHIPS OF THE MODEL OF STATE ORGANIZATION

### 1. Constant and Temporary Points of Importance in the Socialist State Organization

We have studied institutions and their development in the foregoing chapters. In accordance with the system of monographs, first I have given an outline of the historical development of the entire socialist state organization, and then discussed the various institutions: the representative organs, legislation and execution, local and regional organizations, the forms of direct democracy, the economic-planning organization, the administration of justice, and the institutions of control. Whoever tries to find out the overall trend of development of the state organization with this method of treatment, his investigations will inevitably be narrowed down to the individual institutions discussed. Yet, at the same time, a thorough knowledge of these institutions can be acquired only in this way. So my aim is to sum up everything I have concluded historically, regarding the institutions one by one, (as historical precedents of the present model) and, to mark out the points which determine the likely course of development of the socialist state organization. In order to do so, I must present the factors which made their way into legislation and state practice not now and then as isolated phenomena, but were inevitably valid for longer historical periods. Yet we find also institutions which were not sanctioned by socialist legislation, but accompanied the course of state organization in various periods as underground streams; they came to the surface occasionally, and vanished again only to take their place "unexpectedly" in this process.

The role of experiments in political sciences and in building the state differs considerably from the methods of experiments in the field of natural sciences. While in the case of the latter the acting factors are usually constant and can be defined, their number can hardly be limited in our field, and their effects cannot be regarded as constant. I must add furthermore that following the first period of socialist state-organization (after Lenin's death), all efforts at measuring the efficiency and likely consequences of the various models of state organization with scientific methods were more or less given up. Lenin insisted on exact studies for

the appropriate and expedient construction of the state machinery, especially in the last years of his life when it became evident that due to the international situation, there is a need for building up the Soviet state on a firm basis. Many examples could be cited concerning the results of these studies and the application of them since 1921–1923 (such as the Decree on the function of the Deputy Chairmen of the Council of People's Commissars and the Council of Labour and Defence dated from April 11, 1922,<sup>182</sup> or Lenin's letter to A. D. Tsurupa on the new work regulations of these Councils<sup>183</sup>). All this interest in the experiments of political science, state organization and exact investigations ceased to exist after Lenin's death, and subjective decisions often replaced better-founded research.

The number of experimental studies which tried to lay the foundations for optimal state-organizational models of individual sectors with statistical, mathematical and sociological methods, has grown in the last two decades. The questions of state mechanism have been studied especially in Poland and, concerning certain partial solutions, in the Soviet Union. These studies related to the fields of easiest access: local representative and administrative bodies, and in Poland to a few questions of the administration of justice such as the position of the lay assessors. (Concerning Hungary, I might mention the material of a survey on the body of knowledge of the law<sup>184</sup> as an exact sociological study raising a mass of state and legal problems, although this is not connected with questions of a concrete state organization, as far as its sphere of investigation, or its results are concerned.)

Subjectivism in the social sciences is only one obstacle in recognizing the laws of social evolution. It is not possible, even with the highest degree of objectivity, to obtain results as exact as in natural sciences. In social sciences, including scientific state-building, we must take into account that we can verify the correctness of our actions only after the event and, moreover, only from the circumstance whether we succeeded in attaining what we expected, or our measures had the opposite or negative effect. This explains why in political sciences it is natural to start the experiments in larger territorial units even if their results cannot be absolutely secured in advance. Thus the results of these cannot be considered as guaranteed. It is possible, too, that models seeming at the first glance logically correct will fail as a result of social changes and in a short time new organizational changes become necessary.

<sup>182</sup> Lenin, V. I.: *Collected Works*, Vol. 33, Moscow, 1974, pp. 335–343.

<sup>183</sup> Lenin, V. I.: Letter to Tsurupa, *Collected Works*, Vol. 35, Moscow, 1976, pp. 535–537.

<sup>184</sup> Investigation into the Knowledge of Law. Proceedings of the Institute for Legal and Administrative Sciences of the Hungarian Academy of Sciences. Society and Law I. Edited and introductory study written by Kulcsár, K., Budapest, 1967.

All I have said above is only for drawing a few conclusions for the purpose of our subject-matter. So we may conclude that:

(a) Not all organizational forms which emerged in the socialist state organization in the course of history, reflect the necessary and appropriate requirements of building the state. Therefore it is better to wait and see a longer process of the functioning of various state organs, and to form an opinion on their expediency only later. Neither apologetic attitude, nor subjective criticism will promote the cause of state organization and institutions.

(b) When we wish to recognize trends, we must consider organs that had worked for a longer period, for those can tell us something about the historical tendencies of building the state.

(c) The general tendencies can be detected only by an investigation of organs having an important function in the state organization. The insignificant organs, performing partial functions, at best add a few colours to the functioning of the organization as a whole.

(d) Important functions are performed in most cases by constitutional organs (i.e. those established by the constitution). But, as I have already demonstrated, also extra-constitutional organs may assume this rank, either because of the obsolescence of the constitution, or because of the decline of the constitutional spirit.

These few considerations warn us once more that there is a difference between studies for the purpose of minor reforms, and observation fields and methods necessary in case of major changes in the model. In the first case we necessarily study the given institutions in their isolation—even if we know that this method cannot provide an objective picture because it does not measure and disregards interactions. In the second case, however, the incoherent minor phenomena, disclosing no major correlations, are naturally vanishing, and the state-organizational forms emerging not on the basis of single subjective decisions come to the fore. Relationships, which provide a connecting link between the operations and powers of organs wide apart must be demonstrated here.

For example, to judge the course of development of a state-administrative apparatus, it is no longer enough to study and consider the inner development of this organization. In view of the fact that the socialist state, due to its class character, insists on a definite measure of democratism in all its organs, this organization is connected with the *elected organs*, and with other organs of *popular*, i.e. mass nature. On the other hand, the activity of administrative organs must be guided not only by *expediency*, but also by *legality*, which, however, might make the authority of these organs collide with the powers of the administration of justice, viz., with those of the procurator, the chief protector of legality. But no matter which organization is the subject of our study, we find the interaction of organs of



various types, levels and importance everywhere. To disregard this would have the consequence that we simply took no notice of the division of labour within the state organization and its favourable or adverse effects which must be thoroughly studied.

That is why I believe that it is the task of any investigation concerned with state-organizational models to set the identification of major relationships and general trends as its aim. And what we must investigate in this field first of all is the points of importance in the state organization in order to find out what purposes can be served by the power relations within a given model.

Many approaches to the real model are possible. But, probably, the substance of a model can best be ascertained if we try to identify the *leading organ* of the given state organization, or its branches whose powers and changes fundamentally affect the position of other sectors of the state organization. It is, of course, hardly possible to find a period—except for the initial phases of revolution or counterrevolution—in which the concept of “leading organ” can be reduced clearly to a single organ or a single type of state organization. The usual experience is that an ensemble of organ-types—supporting one another—becomes the centre of the state power within the given state apparatus. Moreover, it is also characteristic of this structure that the organ, which is leading according to the constitutional model, makes it possible in practice for other organs to co-operate with it in the centre of power, and to change thereby its political significance, to enhance its former powers beyond the constitutional compass.

To begin with the example of a non-socialist state, the changes of the power model of the United States of America deserve attention. As it is known, the Constitution of the United States was built on the preponderance of the presidential institution from the outset (the President at the summit of the executive power was elevated from the triad of Montesquieu to the extent that—with the aid of his various constitutional powers—he was able to gain the advantage over the Congress, legislation, and the representative system). But there were periods when the President—out of various political considerations—allowed more “freedom of movement” to the Congress or one of its Houses. It is a commonly known fact that such co-operation determined constitutional practice for shorter or longer periods, and that later on Presidents had to make great efforts to change it and to establish or enliven new organizational relations. It is known, too, that for more than a century and a half, the “ensemble” of the President and Supreme Court has been the centre of power, owing to the constitutional practice of the presidential veto, and constitutional norm-control. Since the appointment of the members of the Supreme Court depends on the President for the most part (though only to the extent that in case of vacancy he may appoint new judges with the ap-

proval of the Senate, as a result of which most delicate situations may develop in case of unfavourable constellations), this co-operation may be called almost complete in the last decades, since the changes that took shape in the Supreme Court during the administration of President Roosevelt. Meanwhile, however, there were new attempts at shaping different models; the organization shaped in this way was able to maintain its constancy, its real position of power in many a case for a longer time.

It is typical, for example, that at the time (during the economic crisis of the 1930s) when the intervention of the state in economic life became quite overt, it was necessary to shape a suitable state model and leading organs. It was, so to say, self-evident that the administration (including the so-called staff, the offices and federal administrative organs restricting the powers of the various states) which formerly played a relatively inferior role, compared with the President, expanded considerably in a certain respect, and became independent as a result; it became a partner organization to presidential power. It is also typical of this era that the presidential power, and the administration resting on the principle of efficiency, waged a war with the judiciary, especially with the Supreme Court, which tried to restrain them.

I took a bourgeois state as an example, a country having an old constitution and a "constitutional practice" deviating from the original constitutional idea, in order to call our attention to the sensitivity of the constitutional model, to the importance and necessity of changes in its essential points. The President of the United States has been the permanent, stable centre of power, except for short periods characterized by indulgent Presidents.<sup>185</sup> However, beside him, for a shorter or longer time according to the economic-political needs of the given period, this or that sector of the centre of power was conquered by an organization most suitable for the given tasks and grew into the partner-in-power of the President in this way. A constant centre of gravity with temporary ones—this provides the *stability* and *mobility* of the constitutional model of state organization. The constant centre usually proves the leading role of the original constitutional model, while the temporary ones show the adaptability of the constitutional organization, the demand for an efficient handling of the tasks of the time.

Needless to say, the temporary centres of gravity are easier to form than the constitution itself; when the constitutional scheme of the state organization is outlined, it is of skeleton nature. The more detailed the constitution, the less possible it is to shape new spheres of power. I should

<sup>185</sup> A well-known work of American political literature called the President not only the leader of the nation, but also "the leader of the world" (*The President and World Leader*, by Sidney Warren, Philadelphia — New York, 1964).

like to add that frequent constitution-making does not necessarily give vigour to the living forces of the constitutional organism. Namely, frequent amendments, and especially total revision, entail a certain *perfectionism* which feeds on the notion that the actual problems of building the state can be solved in detail by means of casuistic legislation. The fact is that up-to-date needs arise much more often than it is possible even to entertain the idea of a new constitution. Consequently the over-detailed quality of constitutions actually becomes an impediment to true mobility, to adaptability. Socialist experience shows that the belief in the rigidity of constitutions does not permit constitutions to be made more frequently than every 8–10 years. We know of one exception to this rule, Rumania, where four major constitutions were made during the past three decades, and in two cases there were only four years between one constitution and the other. Amendments of great importance were made even in the intervals. The Rumanian example shows with its frequent changes of constitutions and amendments that it is not possible to follow the changes in social needs by means of detailed legislation.

So this is how these two requirements collide in our constitutions: one requirement is to bring constitutional regulation and constitutional reality as close to each other as possible, the other one is that the state organization must be suitable for establishing more elastic, temporary points of importance, viz. centres of power. The consequence is that the ideal of a detailed, rapidly changing and amended constitution is opposed to that of a skeleton constitution which determines the centre of power for a long time, but allows fairly great freedom and possibilities for establishing temporary centres of importance. This still undecided question of the future forms of socialist constitutions presents a further problem. Anyway it indicates that the so-called second line of constitution-making, i.e. the codification of important issues which is not necessarily included in the constitution itself, must be considered thoroughly. This would make it possible to observe constitutional limits in such secondary fundamental laws which would lend adequate mobility to the shaping of up-to-date forms.

No matter how the constant and temporary centres of gravity will be laid down in constitutional law, this duality has been typical of the socialist state organization up to now. The extremely stable and rigid Soviet or Hungarian Constitutions equally served as the background for developing the system of dual centres of weight, just as the frequently changing Rumanian or Yugoslav Constitutions. The needs of society can make no use of an inserviceable model of state organization, and such a model is altered, and attempts are made at suitable reforms, well before the destroying effect of an impractical organizational pattern makes itself felt.

I have set forth earlier that, in principle and usually in practice as well, the stable element, i.e. the constant centre of gravity in the state organization can be inferred from the constitutional model. This possibility ceases to exist in one case: if the written constitution becomes fictitious with its complete organizational pattern. (The fictitiousness of the formally valid Chinese Constitution has reached by now such a degree that any investigation of its institutions is only possible from the historical point of view. Since the cultural revolution destroyed the constitutional organs, but created so far no general organization, it is impossible to ascertain what has become of the former "constant" centre of gravity in the state organization, or what is becoming of it. Apart from this instance, however, no such fictitiousness exists in the socialist states.)

When studying the socialist constitutions, I said that, apart from the Cuban Constitution, the *priority of the popular-representative*, so-called *state-authority organs* may be regarded as general; in reality, the *top position of the highest (national) organ of popular representation* over the other organs of the state is general. I have supported this conclusion by pointing out the separation of the central and local organs of state power and representation in the Soviet Union in the 1920s, and, after this, the increasing distinctions in the European as well as the Asian countries. A particular socialist "parliamentarism" was born, which maintained a few connecting features of the original Soviet system between the supreme and the local organization (attempts are constantly repeated to consolidate these connections), but was differentiating these two functions in the principal questions of power. This "parliamentarism" by which I mean the special sphere of powers of the representative organ at the summit of the power hierarchy—was made universal almost in its entirety by the socialist constitutions of our days. The expressions of the Czechoslovak Constitution of 1960 according to which the national assembly is the supreme organ of state power, the only national legislative body which decides the fundamental questions of the domestic and foreign policy of the state, etc.; the similar statements of the Rumanian Constitution of 1965 about the Grand National Assembly as the supreme organ of state power and the only legislative organ of the republic; or the term in Article 282 of the Yugoslav Constitution according to which the Federal *Skupština* "is a social self-management body, and the supreme organ of power within the framework of federal rights and duties"; or the text of the Constitution of the GDR, according to which the People's Chamber is "the supreme organ of state power in the GDR", and decides the fundamental questions of state policy and is at the same time the only constitution and law making body;—all these statements show the firm position which the supreme representative organs of the socialist countries hold in the constitutional model. Several new constitutions emphasize the exclusive exercise

of the right by this organ (Hungarian Constitution Paragraph /2/ Article 24, Paragraph /2/ Article 25, Paragraph /5/ Article 30; Paragraph /3/ of Article 108 of the new Soviet Constitution), i.e. the unlimitability of its rights (Constitution of the GDR, Paragraph /2/ Article 48). These highest bodies of popular representation have retained this important position in every socialist country since the October Decrees were issued. The most constant centre of power in the socialist state organization is the supreme organ of state power and popular representation.<sup>186</sup>

The fact that the supreme organ of state authority and popular representation is the organ of the most constant power, is historically defined by two factors:

(a) Some socialist countries have a *federal* structure. The tendencies of recent years show that the view according to which a federation is a step towards unification in the solution of the nationality problem must be accepted only in a limited sense. It is true, a federative state provides a suitable pattern for mitigating nationality differences, and for creating equality of rights. But this does not mean that the demand for a further expansion of federal and autonomous rights should cease to exist. In fact, such rights were expanded in the last decade in all the socialist countries where federal institutions were functioning. This was so in the Soviet Union, in Yugoslavia or Czechoslovakia. The development of the federal institutions means at the same time a form of decentralization and democratization, and a fight against over-centralization. In the case of a federation, however, the concept of the supreme organ of state power and popular representation is not so unambiguous as in the case of states with a unitary structure. In the federal system, a complete separation of powers takes place on the basis of a constitutional law agreement between two sovereign entities (the federal state and a republic). In this case, therefore, the "exercise of supreme power" is to be understood as supreme power in the hierarchical sense being exercised by the proper organs in the federal or republican territory on the basis of a contract of federation (mostly included in the constitution). This is a case of so-called concurrent organs: each is the supreme organ of state power and popular representation in its own federal unit. A special institution of the Soviet federation is the federal definition of "legislative principles" the limits of which must be kept in the republican codifications. It appears anyway that the federal system did not at all reduce the weight of the supreme power organs. This

<sup>186</sup> As has been mentioned, according to Articles 119 and 135 of the Cuban Constitution of 1959, the Council of Ministers became the central organ. It was a legislative organ and together with the President of the Republic it possessed executive powers. The rights of the Council of Ministers were made highly important by the fact that the right to fill the presidential function was also in its hands. The new constitution, however, brought the structure of the Cuban state closer to that of the other socialist countries, thereby abolishing the former central role of the Council of Ministers.

level of the representative system was adjusted only to building up a federation. The exclusiveness and unlimitability of the type of a unitary state is out of question, of course, since the very existence of a federal state restricts the absolute rights both of the federation and the associated republics.

(b) The other defining factor is the operation of the *substituting organs*. They have operated in socialist states with lesser or greater powers from the beginning, and are usually created by the supreme organs from among their own ranks. (In Yugoslavia there are no such organs, viz. they were earlier abolished.) However, the debates about these organs have been stressed even in recent years. I must say that these presidiums, substituting and operative organs were the most typical forms of the constant centre of gravity, in addition to the supreme organs. Ranging from the initial central executive committees of the Soviet Union to the later presidiums and the councils of state of our days, and to similar forms, the socialist constitutions, apart from the exceptions already mentioned, could not do without these organs. This was evidently connected with socialist "parliamentarism" or rather with a special form of representation, and with the requirement that no organ should be established whose permanent session could become an obstacle to the contacts between deputies and constituents, or to the continued participation of the deputies in the production process. But this scheme has become permanent and it seems that an organization of this type does not remarkably change in the socialist countries as regards its position, tasks and importance, even if its authority is more restricted than in earlier decades.

Now we may discuss the other set of problems, i.e. how the *temporary* and *transitional centres* of importance emerged in the socialist constitutions and outside them in the various periods (either with the support of the state, or as results of practice in building the state). To find an answer, I propose a closer examination of a few institutions which are typical of the early Soviet and popular-democratic legislation. On November 8, 1917, when the decree On the Absolute Power of the Soviets was adopted by the 2nd All-Russian Congress of Soviets, the Council of the People's Commissars was created by the same Congress, in a formal sense as well. According to the decree, the task of the Council was to realize the resolutions of the Congress "in close co-operation with the mass organizations of workers, working-women, sailors, soldiers, peasants and employees", with the aid of its professional departments and collegia. The Council of the People's Commissars was supervised by the Soviet Congress and the Central Executive Committee. This shows that the Council emerged as an executive organ of temporary character, but within a few days it issued such important rules as the press decree, the decree on the eight-

hour working day, the first decree on the judiciary, etc. Thus—as stressed also by literature—the efficiency of this organ made it an even more important legislator than the Central Executive Committee. This concentration of power in a basically administrative governmental organ showed that revolutions and states of emergency increase the rights and duties of the executive power born in the revolutionary way. We may therefore state that such an administrative organization is the most suitable for taking and executing expedient measures with little formalism (this is its advantage) and with the least compulsion of legalization (this is its disadvantage). In states of emergency, at times when legal regulation is not yet firm, the mobility, purposefulness of this organization, identification with revolutionary aims and vigorous reaction to them by such an organization brought very good results. That is why this apparatus grew continuously, for a number of administrative organs were required for solving the multitude of tasks. (On December 18, 1917, the Supreme Council of the People's Economy was created for organizing the national economy and state finances; the whole of national economy was subordinate to it. This organ, which had more power than the 17 People's Commissariats taken together, was integrated with the People's Commissariats by Article 43 of the Constitution of 1918.)

An organization emerged this way in the first days of building the Soviet state which—legitimated by the constitutional powers conferred on it by the Soviets—performed everything with an efficiency that elected organs cannot reach owing to their inevitable cumbersomeness: prompt action and decision, hardly restricted by provisions of the law. The history of socialist building activity shows that whenever such an elastic organ was needed, these efficient methods of administration were used.

In addition to the early constitutional organs, bodies vested with powers necessary in the *state of emergency* or under the circumstances of civil war emerged as a matter of course. In November 1918, the Central Executive Committee—declaring that the republic had turned into a war camp—instituted the first such organ, the Council of Workers' and Peasants' Defence, then the 8th All-Russian Congress of Soviets set up the Council of Work and Defence with the rights of a committee of the Council of People's Commissars (this committee had wide powers of regulation for taking prompt measures); this organ—the Council of Work and Defence—laid down the comprehensive economic plan for the republic, but had to submit it for approval to the Central Executive Committee. After the establishment of the Federation, a similar organ was created for the entire federation. Anyway, these and similar organs were regarded as temporary, irrespective of the considerable powers with which they were set up. They were vested with extraordinary powers because of the state of war, and their *raison d'être* ceased to exist, when this state of war had

come to an end. In a historical retrospect, the increase of the importance of *constitutional* organs must be regarded as much more important, because of the aforesaid tendencies of building the state.

The situation was similar in other socialist countries because of the necessity of strengthening the initial economic organization work and planning. Article 55 of the North Korean Constitution of 1948 vested the Council of Ministers with fundamental rights. Article 109 of the Constitution of 1972 vested in the government and the council of public administration the following rights: the management of industry, agriculture, domestic and foreign trade, construction industry, transport and communication, regional development, town administration, public education, science, culture, and public health service. The Hungarian Constitution of 1949 gives a shorter, less detailed enumeration for making the realization of the economic plan and legislation the responsibility of the Council of Ministers. On the other hand, however, the Polish Constitution, based on earlier practice, enumerates quite a number of economic functions in Article 32: the approval of the annual draft budget (and submitting it to the Sejm), the approval of the economic plan for several years (submitting them also to the Sejm), the approval of the annual economic plan, ensuring the fulfilment of the plan and of the approval of the budget, the annual report to the Sejm on the implementation of the budget, the determination of certain important policies, such as the relations with other states, strengthening the defensive capacity of the country.

The role of the leading organs of administration therefore appeared mainly in the field of economic planning in that period, and we may say that the important position of the administration was made necessary mainly by *the centralized system of planning and industrial management based on the breaking down of the plan*. But it follows from this, that as soon as the usual form of centralization (plan breakdown) was subject to a reform, the role and importance of the administration inevitably changed. The consequence is that a different pattern of power is demanded in the political literature and in the literature on organizational science.

First of all, I should like to stress that after the 20th Congress the necessity of shifting the centres of gravity in the constitutional model arose in most socialist countries also from other sides. This resulted mainly from the circumstance that the administration, guided by utilitarian views, exploited the weak points of the system of the personality cult in accordance with the requirements of the economic system, and often trespassed the limits of legality. The consolidation of socialist legality could, and had to be regarded as one of the facets of developing *socialist democratism*. No wonder that the constitutions adopted in the period that followed the 20th congress stressed a new centre of gravity in the state organization: *supervision by the procurators' organization*. The



so-called general supervision, i.e. supervision over the administration, was especially emphasized. Article 72 of the Mongolian Constitution of 1960 declares that the procurator exercises this supervision over "the observance of the laws by the ministries, other central administrative organs, offices and organizations subordinate to them, by local state organs . . . by official persons . . .". All the rest of Article 72, as a matter of fact, affects the same field, though not expressly with respect to state administration. The Czechoslovak Constitution of 1960 defined the field of such supervision more extensively, enumerating the ministries and other organs of administration in the first place in Article 104. As compared to the past, the powers of the procurators' office expanded enormously in accordance with the political needs. Although this competence did not change substantially later on, we may say that the supervision by the procurator has stabilized its position by now, but has lost its position of importance. In the foregoing, I pointed out the advantages and disadvantages of the procurators' activity. In whatever way we evaluate the activities of the state, it is obvious that the limitations on its activity prevent it from attaining prompt and spectacular success. We have seen, too, that the efficiency of the procurators' office was limited in many fields both vertically and horizontally (its jurisdiction does not cover certain organs, but even where it has supervisory rights, apart from a few exceptions, it cannot take decisive action).

All this had the consequence that, after a relatively short period of transition, the requirement of new centres of gravity in the state organization was put on the agenda in all the socialist countries. On the one hand, the new methods of influencing the economy resulted in a changeover from the merely instructional, administrative methods to the better and more extensive employment of the means of civil law (contractual system), and of the adversary procedure in the judicial field. On the other hand, the means for protecting legality used till then were considered as inadequate, and attempts were made to expand the forms of the administration of justice in this direction. Moreover, this method extended to the control of the constitution (in Yugoslavia). But if we sum up all these elements, we find an interesting result: the means of civil law in the direction of the economy, the new forms of the protection of constitutionality and legality equally point to the *system of the administration of justice* although they serve different purposes. I might as well say that "accidentally" an altogether new task was given to the courts from two different directions at the same time. Through the judicial influencing of the new forms of economic management of the market conditions, through the judicial recourse in administrative matters, through the judicial protection of constitutionality, the organization of the administration of justice became—along with the organization of popular representation—an organi-

zation of central importance at that time. It seems that the guarantees of court proceedings today permit the expansion of the jurisdiction of this organization in several directions, and make the experiments for solving up-to-date problems in this way possible.

Another shift in the centres of gravity took place in recent years. However, this was not so much a change in the type of organs as a modification of the etatist features in various types of organs. The former organs of purely state imperium were replaced by mixed, *state-social* organs in a wide field. This was the consequence of the expansion of the people's control, of the employment of social tribunals and of lay judges (assessors). This process came to a halt later, for it became evident that with the given degree of specialization and necessary expertise one can proceed in this direction only carefully and relatively slowly.

Apart from all this, it had to be admitted that the mobilization of a larger number of citizens, holding no permanent post as experts, may yield better results in certain fields than in the past. Thus, on the one hand, the state organization has preserved the results attained through the employment of the social element; on the other hand, its nature of a centre of gravity has proved to be temporary, and the former organization absorbed the well-proved later ones.

We must conclude from all this that organs emerging as temporary centres of gravity may lose their extraordinary role in the various phases of development and may get solidly incorporated in the improving state organization. So their authority and role do not decrease in the absolute sense, only their relative influence and effect becomes smaller. We may perhaps say that one of the typical ways of the development of the socialist state organization is that *different functions grow stronger from time to time, assume prominence, then get incorporated in the activities of the state with their new competences*, after which the novel forms of activity of another organizational type assume prominence. Of course, this process must not be the result of purely subjective decisions; as I have mentioned, organizational modifications not considered well enough may have a harmful, destructive effect in the formation of both constant and temporary centres of importance.

Hence the "basic layer" of constitutional regulation is the part called the socio-economic system, basis, or socio-political pattern, for it defines basic principles valid for the whole model of state organization. This layer determines, among others, the principal courses and methods of building the state. As long as these parts of the constitutions clearly declare the primacy and determining nature of the organs of popular representation, the constitution-maker—in respect of the details of the constitutional model of state organization—and the legislator—concerning and extra-constitutional state organization that can be created legally—and any other

organ which can create any further organization must not disregard this. On the other hand, if these limits are observed, it is possible to form temporary centres of gravity which result in up-to-date specialization, technical development, the expansion of a rationally organized apparatus of experts.

## **2. Checks and Balances and Guarantees for Shaping Appropriate Proportions**

It may be quite clear after all this that the concept of "building the state" includes the demand for an adequate elasticity of the modern state organization—not only as concerns its everyday activities, but also its general organizational pattern—otherwise it runs the risk of becoming rigid and inefficient. This elasticity is attained if the constitutional compass is used for creating temporary centres of gravity with the preservation of organs of constant importance which can solve tasks of the state in the most expedient manner in the given periods. It must also follow from this that the constitution itself must be elastic enough to permit shifts in centres of gravity which ensure a better performance of the functions defined by the constitution.

The conclusion we must therefore draw is that when we speak of the division of labour in the circumstances of the socialist state, we must understand by this a model in which the firm bases of state power are established and have become permanent. At the same time, organs and organizations already existing, or set up for the purpose, must be entrusted with further tasks from time to time, within the limits of the constitution or possibly by breaking them through with a new constitution or an amendment. This means that the division of labour is not a single political act, but it is the result of a series of renewed political-scientific decisions. Just as there are tendencies existing for a long time in the industrial division of labour (since not even a minimum of organization could be attained without them), there is a necessity for rational changes of expediency from time to time. The same applies to the division of labour in the activities of the state. This is why Engels stated quite clearly: "The separation of powers . . . is basically nothing but the profane industrial division of labour applied for purposes of simplification and control to the mechanism of the state. Just like all sacred, eternal and inviolable principles it is only applied as long as it suits existing conditions."<sup>187</sup>

<sup>187</sup> Marx, K.—Engels, F.: *Collected Works*, Vol. 7, Moscow, 1977, p. 204.

Hence the basic problem of building the state is the division of labour and a closely connected task: to find the constant, supreme expressor and centre of gravity of political (state) power for a given system of society, and, the organ or organs which are the most suitable for supporting the supreme power basis in the performance of temporary functions. This means that power must be exercised *according to principles and in an expedient manner*. All this gives me the task to discuss the concrete forms of the division of labour, the shifts among them, and their rules to be inferred. This is all the more necessary since it seems that in the past decades in socialist literature this problem has been handled rather one-sidedly.

It is Aristotle who stands at the birth of shaping models of building the state with the often-mentioned and later much discussed notion in connection with the triad of state power. In his *Politics*, Aristotle tried to give an outline of the first rigid division of labour built upon the constant centres of weight: "Every polity comprises three departments, and a good legislator is bound to consider what is expedient to particular polities in respect of each. For the good order of the polity necessarily follows from the good order of these departments, and the differences of polities necessarily depend upon the differences in these respects.

The first of the three points is the nature of the body which deliberates on affairs of State, secondly the nature of the Executive, i.e. the offices to be created, the extent of their jurisdiction and the right system of election, and thirdly the nature of the Judicial Body.

The Deliberative Body is supreme upon all questions of war and peace, the formation and dissolution of alliances, the enactment of laws, sentences of death, exile and confiscation, to it belongs the election of the officers of State, and to it they are responsible at the expiration of their term of office."<sup>188</sup> Thus Aristotle, when he thought to have discovered the permanent features in the system of state organs, wanted the "good legislation", i.e. the judicious, deliberating lawmaker to decide how detailed a division of labour he would lay down for the three basic types or factors of power. He concluded at the same time that if these three organizational types work on the basis of an appropriate division of labour (or, in still more modern terms, if powers are separated appropriately), then the "constitution", i.e. the cause of state organization would certainly stand on a firm basis. He actually reserved for himself nothing more than the description of "factors"; as concerns the rest, he only gave rather roughly outlined advice. So he suggested that the Deliberative Body and the Judicial Body must be made up of the collective of citizens, and

<sup>188</sup> The *Politics* of Aristotle. — Translated by J. E. C. Welldon, London, 1883, Macmillan and Co., pp. 232–233.

that the leading official functions should be filled by drawing lots from among all the citizens for assigning offices. Hence, the Aristotelian "model" included only the separation of the organizational functions of the state, and a brief explanation of their general characteristics.

The popularity of Aristotle in the Middle Ages makes it verisimilar that also these ideas of his were known. But it may be regarded as natural that the adherents of feudal division and the adherents of absolute monarchy did "not comprehend" any other forms of building a state, and so the Aristotelian ideas could not become universally known. They became all the more attractive when in England and France the ideological basis of the *Dei gratia* forms of ruling had to be destroyed. We need not repeat the notions of Locke and Montesquieu about the state of appropriate structure, for most of these ideas, in the form they were known at that time, were attached to definite power relations, and class requirements. Both Locke and Montesquieu were pioneers of the fight for the bourgeois state in the sense that they rendered valuable services to the bourgeoisie by setting up schemes which permitted the third estate to share the power, by the philosophical-political justification of this organization, by presenting it as the only rational organization. It is quite natural that no class which really wanted to win, or was already a winner, was willing to accept an equilibrium of the power of classes, neither after the bourgeois, nor after the socialist revolution. It is practically self-evident at the same time that, in the first phase of the revolution when "the class making a revolution comes forward from the very start, if only because it is opposed to a *class*, not as a class, but as the representative of the whole society . . ."<sup>189</sup> the separation of power, the possibility of "dual" power or its temporary possibility is often voiced. This layer of Montesquieu's ideas keeps coming up accordingly. It is typical, too, that the radical bourgeois Rousseau criticized Montesquieu's conception on the separation of powers from this angle: "Par la même raison que la souveraineté est inaliénable, elle est indivisible. Car la volonté est générale, ou elle ne l'est pas: elle est celle du corps du peuple, ou seulement d'une partie. Dans le premier cas cette volonté déclarée est un acte de souveraineté et fait loi. Dans le second, ce n'est qu'une volonté particulière, ou un acte de magistrature; c'est un décret tout au plus.

Mais nos politiques ne pouvant diviser la souveraineté dans son principe la divisent dans son objet, . . . ils font du souverain un être fantasmatique et formé de pièces rapportées; c'est comme s'ils composaient l'homme de plusieurs corps dont l'un aurait des yeux, l'autre des bras, l'autre des pieds, et rien de plus . . . Tels sont à peu près les tours de gobelets de

<sup>189</sup> Marx, K.—Engels, F.: *The German Ideology*, *Collected Works*, Vol. 5, Moscow, 1976, p. 60.

nos politiques: après avoir démembré le corps social par un prestige digne de la foire, ils rassemblent les pièces on ne sait comment."<sup>190</sup> Thus Rousseau was for the unity of the "people's" power, and could therefore not accept the separation of powers which Montesquieu desired, in which different social forces assumed control. And that is why the bourgeoisie did not accept in France and elsewhere the idea of becoming "something"—in the sense of the words of Sieyès—because it wanted to become "everything".

This aspect of the separation of power has long been rejected by all radical democratic and socialist schools of political science. A publicist, who agrees with Montesquieu also in this respect, must be very conservative in our days. The standpoint in the socialist literature on constitutional law according to which the theory of the separation of powers served temporary class interests in England and France, and lost its importance after the victory of the revolution, may be regarded as general. Hence the rigid doctrine on the separation of powers as proposed by Montesquieu rather purposefully, has no significance. (Differing from Aristotle, Montesquieu tried, after defining the functions of state organs, to give an exact definition of those exercising power and of the manners of exercising it in the various branches.) Today we know that this aspect of Montesquieu's conclusions was renounced or suppressed a little bit later by the French and American bourgeoisie. At the time when Montesquieu was still consulted (Madison in number 47 of the *Federalist* said of the relationship of the American constitution-maker with the French theoretician: "The oracle who is always consulted and cited on this subject is the celebrated Montesquieu."<sup>191</sup>) this was done not for the sake of provisional political justifications but it was the other aspect of his thoughts, the theory of balance, that was approved of. It was soon recognized that he discovered an important *functional law* of the state organization. This law indicates that within a new power organization, even if the various branches embody the same class and its will, there are also tensions, preponderances of forces which must be revised from time to time in order to guarantee the homogeneity in the activities of the state organization. It is a remarkable fact anyway that Montesquieu, with his theory of checks and balances, disclosed the growing independence of certain parts of the state organization, and the dangers to society arising from this. It is interesting to see how bourgeois political science evaluated the theory of balance, and what conclusions were drawn from it.

In Chapter IV of Book XI of his work *The Spirit of Laws*, Montesquieu laid down the foundations for his theory of checks and balances,

<sup>190</sup> Rousseau, J.-J.: *Du contrat social*, Paris 1966, pp. 64–65.

<sup>191</sup> Hamilton, A.—Madison, J.—Jay, J.: *The Federalist*, p. 374 (No. 47 — by Madison).

which was adopted later especially by the American constitutional idea. He outlined the danger involved in the abuse of power, and presented a general theoretical attempt at avoiding it: "... c'est une expérience éternelle que tout homme qui a du pouvoir est porté à en abuser; il va jusqu'à ce qu'il trouve des limites... Pour qu'on ne puisse abuser du pouvoir, il faut que, par la disposition des choses, le pouvoir arrête le pouvoir."<sup>192</sup>

His famous train of thoughts in Chapter VI on the separation and balance of functions and power branches is based on this idea: "Lorsque dans la même personne ou dans le même corps de magistrature, la puissance législative est réunie à la puissance exécutive, il n'y a point de liberté; parce qu'on peut craindre que le même monarque ou le même sénat ne fasse des lois tyranniques pour les exécuter tyranniquement.

Il n'y a point encore de liberté si la puissance de juger n'est pas séparée de la puissance législative et de l'exécutive. Si elle étoit jointe à la puissance législative, le pouvoir sur la vie et la liberté des citoyens seroit arbitraire: car le juge seroit législateur. Si elle étoit jointe à la puissance exécutive, le juge pourroit avoir la force d'un oppresseur.

Tout seroit perdu si le même homme, ou le même corps des principaux, ou des nobles, exerçoient ces trois pouvoirs: celui de faire des lois, celui d'exécuter les résolutions publiques, et celui de juger les crimes ou les différends des particuliers."<sup>193</sup>

Following this—still in Chapter VI—he elaborates the various relations of balance: between legislation and the executive with the establishment of the bicameral system within the legislation. "Le corps législatif... étant composé de deux parties, l'une enchaînera l'autre par sa faculté mutuelle d'empêcher. Toutes les deux seront liées par la puissance exécutive, qui le sera elle-même par la législative.

Ces trois puissances devroient former un repos ou une inaction. Mais comme, par le mouvement nécessaire des choses, elles sont contraintes d'aller, elles seront forcées d'aller de concert."<sup>194</sup>

Let us now leave Montesquieu by concluding with a glance upon this picture which might be called a compromise, but dialectical skill as well: it may not be said that his standpoints must be restricted only to the period of assuming power. It appears clearly that he was familiar with the illegitimate ways of power and that he wanted to ease the "new", the bourgeois state from this burden.

All this contradicts to what had long been ascribed to the state model based on the separation of powers: to the fact of a supra-class quality. This theory served the needs of the bourgeoisie not only by breaking

<sup>192</sup> Montesquieu, Ch. de: *Œuvres complètes*, Paris, 1877, Tome quatrième (De l'esprit des lois), p. 5.

<sup>193</sup> Ibid. p. 8.

<sup>194</sup> Ibid. p. 20.

through the homogeneous power apparatus with the aid of the tripartite division, theoretically "playing" legislation, or part of it, into the hands of the third estate. There was a possibility, much more decisive to the advantage of the bourgeoisie: after assuming power, it could apply a check on the legislative branch affected by popular movements and on its possible democratic primacy, first with the aid of various countermeasures of executive power; later on, at the time of the political commitment of the administration, with the organization of a conservative administration of justice.

The principle of "checks and balances" was no longer the means of power struggle between classes; it was the defender of the *raison d'état* of the bourgeois state, of the objectives of the bourgeois class envisaged on the state level. As for me, I deny that the theory of checks and balances and especially its practice, could offer any advantage to the lower middle class in the bourgeois states of our days. I rather discover in this theory that with its aid it is always possible to rectify acts and practice arising from a bureaucratized state machinery if these fail to serve the aforesaid *raison d'état* consistently. Checks act almost constantly in one direction: against the activity of legislation if this appears not manifestly expedient for bourgeois aims. (Think of the pitfalls of the legislation of the United States: beginning with the filibuster, continuing with the Senate's objection, the veto, the pocket veto, up to the norm-control of the Supreme Court.) Hence the checks and balances actually correct the non-expedient, non-modern activity of the state in accordance with the requirements of the ruling class. (Actually, the force of the currents within the ruling class also depends on what is the best for the "average" of the ruling class. No wonder, then, that the organs which are the most timely means of the system of checks and balances are subject from time to time to the revision of political notions, and that the political line of state acts changes as a consequence.)

Bourgeois political science, naturally, deprives the theory of checks and balances of its class character also in the sense that it presents the variety of counterweights as if the 18th-century formula of power branches provided some supra-temporal, supra-class solution. (Antoniolli wrote a few years ago that the separation of powers "... is a timeless means for ensuring freedom".<sup>195</sup>) But we must try to find the image of reality, and if we remove the deposits of centuries, we discover beneath them an important invention of the bourgeoisie with the aid of which it was able to adapt itself in the organizational way to changing political and economic conditions, as long as its existence was not menaced by revolutions and crises. With this tool, which in the 20th century kept expanding

<sup>195</sup> Antoniolli, Q.: *Herrschaft durch Gewaltentrennung*, Forum 1964.



the organizations that could be used for various purposes besides the early triad, the bourgeoisie succeeded several times in suppressing certain organs that had become independent and served bureaucratic interests and not bourgeois class interests.

Which are the organizations that belong to the power branches according to modern bourgeois political science? As I have mentioned, the legislative, executive and judicial bodies of the triad are no longer regarded as the sole carriers of power. While the French Constitution did not mention the word "party" at all, and the Weimar German Constitution of 1919 did so only in a subordinate clause, the general use of the expression "party state" shows that the political parties have joined by now the ranks of powers as real and constitutional bodies. The various interest groups, organs of social nature, pressure groups and lobbies are often regarded to have more real power than the parliament, and certain authors place even various federal institutions of different levels into this order. More and more of such institutions are placed in the category of constitutional organs.

Socialist state theory has so far taken a negative standpoint towards the theory of checks and balances, the separation of powers;<sup>196</sup> I think that today we must make a realistic approach to this theory.

The keen interest taken in this question in the recent years—though it resulted in professional discussions rather than in publications—appears also from a remarkable study on the building of the Soviet state. Tikhomirov in his treatise, published in *Sovietskoe Gosudarstvo i Pravo* in 1967, wrote: "... in the various evolutionary phases of the Soviet state ... the best possible relations among the various state functions and the corresponding state organs were searched for. So it is natural that the literature was much concerned with the evolution of the forms of state power; it is true, the views according to which the separation of powers can by no means be applied to our circumstances, became dominant. It is urgent to re-consider this problem. In the present new phase of evolution of the state, characterized by the advance of the socialist economy and culture, administration has become complex and specialized, and this is organically connected with its further democratization. Changes take place in the social division of labour and in the administration as a result."<sup>197</sup>

Thus Tikhomirov points out at the very beginning that state theory must try to (a) find the optimum of the various state functions and organs, (b) to reconsider on this basis the principles of the division of labour within the state, (c) and that we should not be afraid of re-evalu-

<sup>196</sup> (Levin, I. D.) Левин, И. Д.: *Современная буржуазная наука государственного права* (Modern bourgeois public-legal science), Moscow, 1960, pp. 348–349.

<sup>197</sup> (Tikhomirov, Ju. A.) Тихомиров, Ю. А.: *Разделение властей или разделение труда?* (Division of power or division of labour?), pp. 14–15.

ating the theory of Montesquieu, the importance of which in the advanced societies is to be found in the separation of the state organs; i.e. in the separation of the various functions of state authority. The author also indicated that bourgeois state practice (and theory, I might add) had carried out its "own" corrections of this theory, but this should not hinder us in studying the original and then the already changed conclusions of this theory, and in making use of everything that has been proved correct in accordance with our social conditions, power and other requirements.

Let me begin this train of thoughts with Tikhomirov's interesting conclusions on the problems of the constitutional model, and point out the necessity of reforms in the Soviet constitutional structure. According to Tikhomirov, "the artificial isolation of various state activities . . . must be eliminated".<sup>198</sup> He enumerates three forms of realizing state power (direct, representative, and professional participation) and six classes of state organs: the representative, executive and disposing organs, the administration of enterprises, institutes and organizations, the control organs, the judiciary, and the procurators' organs. He emphasizes that these classes are connected by a multitude of functional relations. Therefore it is not necessary to absolutize any of these organs.<sup>199</sup> He then concludes: "In the present phase of evolution in the division of labour, we see a process going from organizational integration towards organizational separation. This process reflects the progressive evolution and specialization in the Soviet state. A new element in this process is a closer approach to one another of all state organs as a result of their common democratic methods, and the introduction of the principles of representative and direct democracy. An increasing interdependence of the various spheres of social and state life . . . and an increasing functional approach between state organs can be observed."<sup>200</sup>

The cited study draws very interesting conclusions on specialization and co-ordination. But we must not forget that the early Soviet state (after 1918) was already characterized by extreme specialization, even if not in accordance with the present division. It could be hardly said that specialized branches of the state organization did not develop in the European people's democracies in the early 1950s, all the less so, since the former organizational traditions were not destroyed by the introduction of the socialist order. But it is quite clear that the competences have changed, have become more exact; the functions and powers of these organs are increasingly distinguished both horizontally and vertically.

<sup>198</sup> Ibid. p. 15.

<sup>199</sup> Ibid. pp. 17-19.

<sup>200</sup> Ibid. p. 22.

Today, socialist legal literature, examining this problem that is repeatedly raised today, goes far beyond all this and tries to find answers to the questions from the sociological aspect. Efforts are being made to fight with several political and legal means against the danger of *alienation*, *bureaucratization* (in the pejorative sense), *latent functions* and *disfunctions*. The experience of the past decades shows that the state and legal means and institutions in the fight against social dangers must be neither overestimated, nor underestimated. The best example is the fight for socialist legality which showed that though it is the political atmosphere that is mainly important for the public feeling of society, the individuals, the citizens and institutions, can be protected with many-sided legal guarantees against the violation of laws and their consequences. What we must understand by legal means is, among others, to make the state organization fit for fighting bureaucratization, latent functions and disfunctions.

So, in order to achieve these aims, we must find the *suitable means*, within the framework of society and the state. It would be a too rigid attitude not to see that today the direct effect of social forces on the constitutional model is quite obvious. There have been considerable changes occurring along this line. While Article 126 of the Soviet Constitution of 1936, in connection with the rights to unite in public organizations just touched upon the Communist Party (as the voluntary organization of the most active citizens, as "the vanguard of the working people in their struggle to strengthen and develop the socialist system"), the trade unions and the co-operatives, etc., the new socialist constitutions emphasize the party organs together with other social organizations, as the determinant factors of the social system. The following was included in the Preamble to the Mongolian Constitution of 1960: "In the Mongolian People's Republic, the leading and directing force of the society is the Mongolian People's Revolutionary Party guided in its activities by the triumphant Marxist-Leninist theory." At the same time, the statement concerning the Party was included in Article 82, on the fundamental rights and duties of the citizens, regarding the liberty of assembly in various social organizations (as in the Constitution of 1936). The Communist Party of Czechoslovakia under the leadership of which the working people was victorious, is mentioned in Chapters I and II of the part entitled "Declaration" in the Czechoslovak Constitution of 1960. In Article 4 of Chapter I on the social system it is stated: "the leading force of the society and the state is the vanguard of the working class, the Communist Party of Czechoslovakia, i.e. the fighting alliance of the most active workers, peasants and intellectuals." Article 6 mentions the National Front as the political expression of the "alliance of village and urban workers led by the Communist Party of Czechoslovakia". Article 11 states that on all levels of direction, the

participation and creative initiatives of the workers and their organizations, especially those of the Revolutionary Trade Union Movement, are effective regularly, to the greatest extent. After these statements, no special mention is made in this Constitution of the party and mass organizations in connection with the fundamental civil rights.

The Yugoslav Federal Constitution of 1974, in Chapter VIII on Basic Principles, contains provisions on the Socialist League of the Working People of Yugoslavia and its functions, and declares the following about the Party: "Under conditions of socialist democracy and social self-management, the League of Communists of Yugoslavia, with its guiding ideological and political action, shall be the primary initiator and exponent of political activity aimed at safeguarding and further developing the socialist revolution and socialist relations of self-management, and especially at the strengthening of socialist social and democratic consciousness, and shall be responsible therefor."

The Rumanian Constitution, in Article 3 defines the position of the Party in the social mechanism concisely: "In the Socialist Republic of Rumania, the political leading force of the society as a whole is the Rumanian Communist Party." Similarly to the Soviet Constitution of 1936, the Constitution speaks of the position and role of the Party in detail: "The most advanced and conscious citizens from the ranks of the workers, peasants, intellectuals and other categories of working people unite in the Rumanian Communist Party, the highest form of organization of the working class, its vanguard detachment. The Rumanian Communist Party expresses and loyally serves the aspirations and vital interests of the people, implements the role of leader in all the fields of socialist construction and directs the activity of the mass and public organizations of state bodies." After this, in connection with the right to assembly it speaks of the trade unions, co-operative, youth and women's organizations, social-cultural organizations, creative associations, scientific, technical, sports associations, etc. It is these organizations whereby the participation of the masses in political, economic, social and cultural life as well as in social supervision is ensured. In Article 80 the Rumanian Constitution changed the Council of Ministers into an organ in which a certain co-ordinating centre of social organs was established, since the following persons take part in its activities: the president of the Central Council of the Trade Union Association, the president of the National Association of Agricultural Production Co-operatives, the president of the National Women's Council, and the first secretary of the Central Committee of the Communist Youth Association, in the rank of ministers. A parallel tendency appears for merging the local and regional leading organs of party and state.

The constitution of the GDK, after its amendment in 1974, in Paragraph /1/ of Article 1 speaks of the leading of the state by the working

class and its Marxist-Leninist Party; a special article is devoted to the National Front of the GDR, to the trade unions and their rights; the parties are mentioned in general terms, in two passages. Article 3 states: "In the National Front of the GDR, the political parties and mass organizations pool all forces of the people for joint action for the development of socialist society." According to Article 29, "citizens of the GDR have the right of association in order to implement their interests in agreement with the principles and aims of this Constitution by joint action in political parties, social organizations, associations and collectives." As mentioned above, two chapters are devoted to the trade unions and the socialist agricultural co-operatives where the participation of the working people in administrative, social, etc. decisions is discussed (Chapters 3-4 of Part II).

By the amendment of the Hungarian Constitution this constitutional problem has been also settled, by replacing the former ambiguous regulation. Article 3 of the new Constitution declares: "The Marxist-Leninist party of the working class is the leading force of society." Paragraph /2/ of Article 4 mentions the Patriotic People's Front which "unites the forces of society for the complete building up of socialism, for the solution of political, economic and cultural tasks, and co-operates in the election and work of the organs of popular representation". Paragraph /3/ of the same Article, similarly a new one, says: "the trade unions protect and strengthen the people's power, defend and represent the interests of the working people".

Paragraph /2/ of Article 1 of the Bulgarian Constitution of 1971 states that "the leading force of the society and the state is the Bulgarian Communist Party", and Paragraph/3/deals with the brotherly co-operation between the Bulgarian Communist Party and the Bulgarian Peasant Association. The Patriotic Front is discussed in the preamble to the Constitution, and in Article 11.

For the first time in the history of Polish constitutions, the 1976 Constitution gives fundamental statements as regards both the Party and the People's Front. Paragraph /1/ of Article 3 declares in connection with the Polish United Workers' Party that "it is the leading force of society in the building of socialism". The National Front of Unity is characterized as follows: "It provides a sphere of activity for the social organizations of the working people and for the patriotic associations of all citizens." The basis for the National Front of Unity is the co-operation among the Polish United Workers' Party, the United Peasants' Party and the Democratic Party (Article 3, Paragraphs 2-3).

The most detailed statements on the constitutional position and relations of the Party and the mass organizations are included in the Soviet Constitution of 1977. After declaring in Paragraph /1/ of Article 6

that "the leading and guiding force of Soviet society and the nucleus of its political system, of all state organizations and public organizations, is the Communist Party of the Soviet Union" and that the Party serves the people, the Constitution briefly enumerates the fields in which the Party determines the development trends of society. Completely new is the text of Paragraph /3/ which states that "all party organizations shall function within the framework of the Constitution of the USSR". Thus, in the functioning of the Party, the constitutional framework and binding force is necessarily as fundamental as it is in all state and other social organizations.

Articles 7 and 8 briefly mention the position and role of trade unions, the youth organizations and work collectives in state and social activities.

We have surveyed an interesting field of the socialist constitutions along the line of recent regulations. We have found almost everywhere statements like these: "the leading core of the social and *state* organization", "directive vanguard", "guiding and leading force of society and *state*". Thus, the position of the parties in society and state mechanism was laid down on the level of the constitution, too. It is obvious, however, that constitutional regulation cannot be more than a concise declaration, therefore cannot reflect the real effect exerted by the Party (and other social mass organizations) on the state organization and its working. The constitution cannot do so all the more because it cannot regulate the forms of activity of social (non-state) forces, their methods of influencing, unless they are contrary to public order. Organizations of social nature regulate their own activities through their own statutes. The means by which a given mass organization takes part in influencing the state organs, are determined by two factors: the *objectives of the organization* and its own demands and *ideas* and, on the other side, the *will of the state*, i.e. to what extent it is ready to permit non-state, i.e. social forces *entering its own sphere*. This relationship seems to be rather simple if stated in this way; but in practical life it is considerably modified by the fact that certain organs of the state are created by the action of social forces, influenced first of all by the power constellation of political parties and other allied social forces. This reality has the effect that state sovereignty is not to be understood as if some "abstract" state would face social forces. Social organizations have taken part in some way or other in the actions of the state ever since the birth of the socialist state; they have determined its life, legislation, expedient organization, etc.

It is an unambiguous feature of the socialist states that a considerable difference exists between the influence of various organizations of the working people on the state organization. The constitutions clearly reflect that the role of the Marxist-Leninist Party ("the leading and guiding force of state and society") is the most important, while the mass

organizations' forms of activity, their influence on the state, are determined by this Party and by the state itself. We may speak here of an influence exercised by power relations, that resembles a hierarchy. There is a difference between the influence zones of non-state forces which permits the activity of not only the Party but even that of other social organs within the state mechanism, but both the constitution and reality emphasize the leading directive-controlling activity of the Party.

That way, the Communist Party itself became a fundamentally important organization of counterbalance in the socialist states. Whenever harmful, alienating, disfunctional symptoms appear, or are likely to appear in the future, in the activities of the state, the Party is in command of the means by which it can mobilize social forces, point out the correct line of action, for restoring the normal course of state operations. The Party from this point of view is in control of the state and social forces.

It is within the decision, the general policy of the Communist Party to what extent and by which means it intends to intervene in the actions of the state. It is a known fact that changes have taken place during the building of the socialist society, and that considerable modifications took place especially after the 20th Congress of the CPSU. If an efficient, detailed party control was typical in the past, this has changed by now—without any considerable reduction of the important branches of party control. The directive-leading function, with its detailed methods involved, plays an important part in the rules of organization of the Party, but it is now increasingly stressed that the Party does not, and cannot take over the functions of the state. Hence, the main motive of guidance is the realization of party decisions through the party members. This is why Article 31 of the party rules of the Hungarian Socialist Workers' Party declares: "The Party ensures with its *ideological-political* guidance the realization of the objectives of the working class in the activities of the socialist state. It enforces its policy and decisions through its members active in the organs of state authority who are responsible for their official work, for the implementation of laws and decrees both to the Party and to the organs of the state."

If, therefore, we try to find the means and ways by which it is possible to attain the required measure of controlling and counterbalancing the state organization, we find them primarily outside the state organization itself, in the aforesaid function of the Party. (We have already touched upon the increasing co-operation of social and mass organizations in the performance of state functions.) Yet party control—just because it does not wish to interfere with the state activities by using the old methods—can evidently not counterbalance the disfunctions and disproportions of the state activities. Social and mass organizations are even less able to do so, since all their state activity is dependent on state consent, on legal

authorization. A rational organization of the socialist state naturally makes use of the potentials of the social and mass organizations, of their legitimation by various social strata (their reputation, presence in leading positions of society) but all these are restricted to definite spheres.

However, it amounts to no fundamental change in the control of the state organization, especially in the counterbalancing function, if state and party organs are merged (such was the reintroduction of party and state control in some socialist countries), because this leads to the "nationalization" of these organs under normal circumstances, namely, their state-hierarchical features are reinforced. On the other hand, I cannot agree with entrusting certain state responsibilities to party organs, for this weakens dual (party and state, or social) control in certain fields. Party organs are competent, first and foremost, in determining the political line and passing political decisions, but their function, even organization, might be distorted by the administrative task of execution. This would inevitably lend state features to the Party, with all their consequences (declaration of sanctions, direct employment of the organs of coercion, pushing political methods into the background, etc.).

History teaches us that a satisfactory solution is obtained if the Party maintains its guiding functions as established since the 20th Congress in the political, ideological fields and if the adequate *counterweights* for protecting the living forces of the socialist state organization are guaranteed *within the state organization itself*. Occasional views on the increase of self-management which take into account only new organizational forms, disregard the existing representative organs that embody the constitutional basis. They look for unstable solutions which are not based reasonably enough on socialist traditions. I readily recognize the possibility of shaping new technical methods on the basis of the socialist state organization for meeting the increasing requirements of society; but I am of the opinion that these possibilities should not be overestimated.

In the last decade, or even earlier, it became evident that the framing of new constitutions produced no new organizational types (or, apart from the Yugoslav or Cuban Constitution, this was not the main characteristic of these constitutions); they rather gave birth to other spheres of authority of existing representative, administrative, jurisdictional and control organs and there was a shift of former proportions of jurisdiction for very obvious political reasons. And what can eventually be concluded from these modifications is the fact that new methods of checks and balances are required in the socialist state of our days.

What is needed, therefore, is guarantees which are suited for the protection of both the *lawful interests of citizens* and the *raison d'état*, and prevent, or at least restrict, the distortions and disfunctions of certain parts of the state apparatus. The regularity and constancy of these



guarantees depend on the establishment of *stable organizational forms* and spheres of authority which react to given acts of the apparatus always in the same way, or block the way of the given action. The alternation of stronger and weaker control activities can arrest at the appropriate point, the activities that are opposed to a greater or lesser extent to the overall objectives of the state. Yet, in order to attain this, it is necessary to create the *adequate counterweights within the state organization* which not only *hinder* the non-expedient activity of a given organization, but in other cases *compel* a passive organization, not meeting its obligations, to *become active* in accordance with its powers and tasks. This means that the counterbalancing organs are *not only checks* (although this is necessary, too), but are of *mobilizing* quality, too.

In order to become acquainted with their nature and effects, let us examine a few counterweights which already act in this direction. We see that such counterweights and checks are present in all the departments of the state organization, yet as a matter of course their nature is highly varied. I shall try to outline the desirable course of development according to the trend that has been so far prevailing.

As I have indicated, the constant constitutional centre of gravity in every socialist state—with the exception of Cuba—is popular representation, including its *supreme organ of popular representation* which is the absolute holder of the people's sovereignty. This means a high priority of the representative organs in socialist society. Does this mean that there exists no possibility of controlling these organs? The strange thing is that we may speak of counterweights which have existed since the very birth of the Soviet system: these are the *direct democratic institutions*, especially recall. Lenin considered recall necessary so that deputies and representation should gain no privileged position under the circumstances of socialism. Of the direct democratic institutions, the village electoral meetings were held according to Article 57 of the Soviet-Russian Constitution of 1918 instead of some small village Soviets. Nowadays, efforts are being made to prevent the stiffening and introversion of the various representative organs. Here I think of the enlivening of the institutions of direct democracy and self-government. So we may speak of significant constitutional attempts: the legal regulation of *recall* (not only regarding local and territorial, but even the supreme organs); the introduction of referendum; the further expansion of *village meetings*, shaping their rights to pass decisions; the expansion of the right of various social and mass organizations to *initiate legislation*. The supervision of the legality of the actions of local and regional organs was placed in the hands of the *procurators* in many states. (Means, not adopted so far in other countries, were given to the administration of justice in Yugoslavia to control even the highest organs of popular representation by the institution of *constitu-*

*tional courts*. And I must add that at present this is by no means regarded as alien to the socialist model.)

The most typical field of checks and balances can be recognized in the *administration*. At the beginnings of building the socialist state an extremely strict form of control, viz. *dual subordination* was introduced almost in the entire field of administration for a different reason, i.e. distrust in the administrative apparatus. The increase of centralization, however, removed ever larger fields from under the horizontal branch of this dual subordination. In any case, hierarchical subordination became, and remained for a long time, the principal line concerning supervision over the administrative acts. Since it became manifest rather early that higher administrative organs, which often gave instructions for issuing law-violating acts on the basis of their rights to direct lower organs, are no guarantee for controlling lower organs, the appropriate organs were searched for in various directions. The often indirect control rights of the popular-representative organs resulting from their rights of appointing (electing) were not held efficient enough; these were rather regarded as one of the forms of *legitimation*. Therefore, the appropriate organ was looked for in another branch of the state organization which was not directly responsible for the activity of the administration. Such an organization was the procurators' office, exercising general legality supervision and—later—the judiciary (with restricted or general jurisdiction). The supervision by the procurators was built on the hierarchical system of annulling unlawful acts, i.e. on the cassational-reformatory authority of the higher administrative organ. But in court proceedings even this was eliminated, and the judiciary took over the right of decision with full powers. So here we see an example of how socialist constitutions provided for a large-scale complementary means of defence in addition to a hierarchical counterweight that was logically correct, and functioned well in certain circumstances, but was not able to eliminate mass violations of the law; and how a complete system of checks was developed in individual cases through the operation of the administration of justice. This, however, is only the facet of legality safeguards; similar counterweights were employed on the expediency line. What I have in mind here is not only the natural control principle to build up an *external* system in addition to the *internal* one. It is much more important that in almost all the socialist countries a completely new form of the people's control (indicative of self-management principles and practice) or a parliamentary supervision was created. Although the *people's control* is actually within the administrative organization, it shows certain forms of the people's self-administration. In many socialist countries, it operates on the lowest level merely with the aid of elected organs. This, therefore, is a case of the mutual counterbalance created by organs belonging to different branches of the

state organization; and the probable trend in our days is their further expansion.

The administration of justice and the procurators' organs do not act only as a counterbalance to the administrative organization; they, too, are under the effect of many-sided counterbalancing. Let us first consider the organs of the administration of justice, where the checks and counterweights are the least effective because of the independence of the judiciary. We must take into account that the courts are bound not only by the laws, but by all constitutional statutes as well, including decrees and norms issued in the sphere of the administration, as well as by the orders and directives issued by local and regional representative bodies. On the other hand, representative or administrative organs (by the election of the lay assessors), and the local and regional representative bodies play the principal role in forming the courts. These powers, naturally, do not curtail the independence of the judiciary in the administration of justice, but they make possible to influence its activity from the point of view of the general legal policy (though not on the level of individual rulings). The process of the democratization of the administration of justice provides the opportunity to the lay element to introduce more and more the moral views of the population into the administration of justice. Undoubtedly, this standpoint is felt in the courts of higher instance, in the activity of the lay assessors, especially where the social tribunals have been incorporated in the judiciary also organizationally.

The typical forms of activity of the procurators' office show how the supervisory activity of other state organs and the procurators are mutually counterbalanced in various relations. In the course of the supervision of legality, the procurator controls the operation of practically all the organs from the angle of legality; but, at the same time, the procurator itself is limited in several respects by the acts of these organs. For example, the procurator cannot exempt himself from the norms issued by the administration, but must take action whenever he finds the law violated by these norms. When the procurators' office supervises the execution of punishments, it carries out its investigation on the basis of court sentences (in addition to general norms); but within the scope of its supervision of the judiciary, it examines the legality of court rulings. When it examines the activities of the courts, it supervises the observance of norms originating from administrative organs, and when examining the administrative organs it supervises the observance of court rulings. Thereby, the procurators' office itself is counterbalancing in both directions and at the same time, it is under the effect of these organs.

It has become evident in the past years that not only the citizen is reassured if he feels that his rights are protected from many sides with different degrees of efficiency, but that the state proper, as a mechanism,

also makes efforts to back up the accomplishment of its objectives with *various safeguards* provided by its own operations. Let me mention as an example the Hungarian experience with the control of the state administration. As soon as the efficient protection of socialist legality was formulated as a political demand, organizational safeguards—often parallel, but always completing one another—were provided: general supervision by the procurators' office, the possibility of the revision of the administrative decisions by the courts, even the people's control acted in this respect to some extent. *Political psychology* could often be more influential in these attempts than the science of organization, but we must admit that this latter factor cannot be disregarded in the theory of building the state.

In addition, efforts are necessary in the socialist state organization to prevent certain organs from becoming too powerful, i.e. that they should not be given constitutional powers that might render them excessively important, and that through disfunction they should not become at the same time organs trespassing constitutional limits at the expense of the constitutional powers of other organs. In the years of the personality cult the function of the administrative organs was overgrowing from time to time—although it was actually "legal" since the basis was provided by statutes. If the war against this omnipotence is to be waged successfully in the socialist countries, care must be taken, too, so that other organizations, led by fashionable slogans of "political science" should not grow beyond reasonable limits acceptable to socialist democracy. (A much smaller, but existing danger of this appears in certain standpoints about the idea of the socialist "judicial state".)

The socialist state organization cannot, and must not be hindered and paralyzed in its development, in its sound changes. But the state organization is not an experimental terrain, it is the developer and defender of the given social and economic order. The most important task is to realize the objectives of society with the aid of the existing institutions, to improve their operation and working conditions; changes should be made in the model only if it is manifest that there is no possibility of performing the functions without them. The changes must take into consideration the experience of socialist countries, taking into account, of course, the particular conditions of the countries.

The division of labour in the organization of the socialist state of our days must be *rational* and *based on principles* in the sense I have laid down several times in this book. It is also my conviction that through the social control of the socialist state organization (the demand for, and the rationalized manner of, party control emerges here first of all) and through the employment of inner counterweights, the objectives of the state and the society can be realized in a more consistent manner. But to attain this,

we must increasingly ensure that *within the constitutional model (in addition to the division of labour) the interactions and counterbalancing among the various types of organs be present. It is not the structure of rigidly separated organs that is suitable for shaping the many-sided forms of building the socialist state but a combination by which it is possible—with an appropriate distribution of powers—to guarantee the non-anarchistic, mutual and defined interaction, namely, the control and the counterbalancing, of all organs.*

Now, at the end of my book, willing to sum up the antitheses of the future development in the socialist state-organizational model, without which no dialectic progress is possible, I wish to remind the reader that they are the following: *socialist traditions and the requirements of modern sociology, psychology and managerial science; adherence to the principle of the people's sovereignty and a high degree of expertise; the priority of popular representation and balance of the branches of state organization; centralism of the modern socialist state and popular self-management, the thousands of variants of direct democratic decision; protection of constitutional and legal order and the use as well as inclusion in the socialist state structure of all the expedient, appropriate means that serve the aims of socialism.*

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